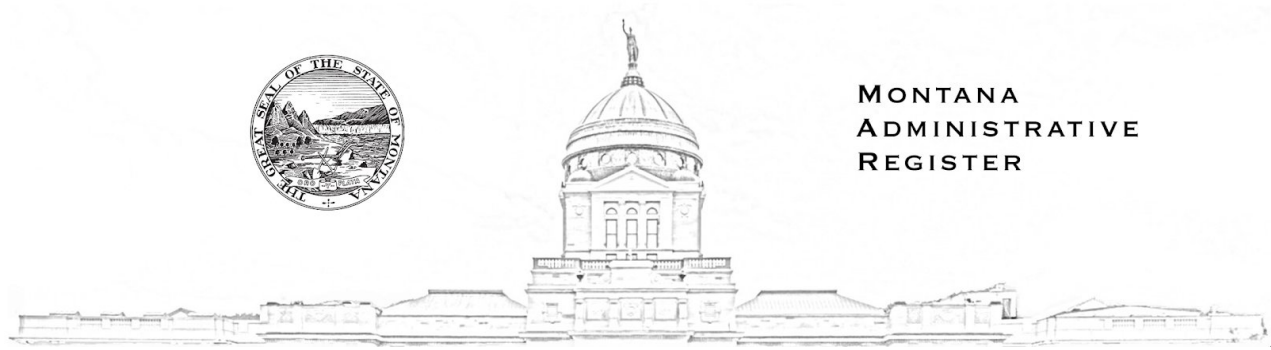




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**DEPARTMENT OF COMMERCE**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-408.1**

**Summary**

Amendment of ARM 8.94.3101 and 8.94.3102 pertaining to the Montana Historic Preservation Grant Program (MHPG)

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**Hearing Date and Time**

Monday, November 3, 2025, at 1:00 p.m.

**Virtual Hearing Information**

The Department of Commerce will hold a public hearing via Zoom to consider the proposed amendment of the above-stated rules.

Video: <https://mt-gov.zoom.us/j/88365006057?pwd=HqEUkaifg0fbsqxibuTjm8dkzBXgYR9.1>

Webinar ID: 883 6500 6057

Passcode: 650803

**Comments**

Interested persons may submit data, views, or arguments orally at the Zoom hearing. Written data, views, or arguments may be submitted to Jada Maynor by email: [DOcadministrativerules@mt.gov](mailto:DOcadministrativerules@mt.gov); or by mail: P.O. Box 200501, Helena, MT 59620. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 30, 2025, at 5:00 p.m.

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## Contact

Jada Maynor  
(406) 841-2596  
jada.maynor@mt.gov  
Montana Relay: 711

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## General Reasonable Necessity Statement

The Department of Commerce proposes to adopt by reference the updated Project Administration Manual (October 2025) and the updated Application and Guidelines for the 2029 Biennium for the Montana Historic Preservation Grant program and incorporate the documents as rules of the department. The MHPG program is a state-funded grant program that supports public or private entities with the preservation of historic sites, historical societies, or history museums.

The documents have been revised to conform to the provisions of HB 756, passed in the 2025 legislative session. The documents have also been updated to reflect streamlined processes and simplified language. The proposed documents can be found at <https://commerce.mt.gov/Infrastructure-Planning/Grants-Loans/Montana-Historic-Preservation-Grant>.

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### **8.94.3101 INCORPORATION BY REFERENCE OF RULES FOR THE SUBMISSION AND REVIEW OF APPLICATIONS FOR THE MONTANA HISTORIC PRESERVATION GRANT PROGRAM**

- (1) The Department of Commerce adopts and incorporates by reference the Montana Historic Preservation Grant Program 2026 ~~2024~~ Application and Guidelines for the 2029 ~~2027~~ Biennium.

- (2) The rules incorporated by reference in (1) relate to the following:
  - (a) eligible applicants and projects;
  - (b) types of grants available under MHPG;
  - (c) general requirements for applying for MHPG grants;
  - (d) application review process; and
  - (e) administrative procedures and requirements.
- (3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the website at <https://commerce.mt.gov/Infrastructure-Planning/Grants-Loans/Montana-Historic-Preservation-Grant>. ~~web site at <https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant>~~.

**Authorizing statute(s):** 22-3-1305, 22-3-1306, MCA

**Implementing statute(s):** 22-3-1305, 22-3-1306, MCA

#### **8.94.3102 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE MONTANA HISTORIC PRESERVATION GRANT PROGRAM**

- (1) The Department of Commerce adopts and incorporates by reference the Montana Historic Preservation Grant Program Project Administration Manual (October 2025 ~~2023~~).
- (2) The rules incorporated by reference in (1) relate to the following:
  - (a) project start-up requirements;
  - ~~(b)~~ environmental requirements;
  - ~~(c)~~(b) procurement requirements;
  - ~~(d)~~(c) financial management;
  - ~~(e)~~(d) protection of civil rights;
  - ~~(f)~~(e) labor requirements;
  - ~~(g)~~(f) project management;
  - ~~(h)~~(g) involving the public;

~~(i)(h)~~ project monitoring; and

~~(j)(i)~~ project closeout.

- (3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the website at <https://commerce.mt.gov/Infrastructure-Planning/Grants-Loans/Montana-Historic-Preservation-Grant>. ~~web site at <https://comdev.mt.gov/Programs-and-Boards/Montana-Historic-Preservation-Grant>~~.

**Authorizing statute(s):** 22-3-1305, 22-3-1306, MCA

**Implementing statute(s):** 22-3-1305, 22-3-1306, MCA

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### **Small Business Impact**

The Montana Historic Preservation Grant program offers significant economic development opportunities across Montana. Project administrators from government, non-profit, and for-profit entities work with various in-state architectural and engineering firms on historic preservation projects. Once awarded, project administrators also work with local contractors and source materials locally. As part of the application process, MHPG applicants are asked about both the immediate and long-term economic impact of the project and are scored accordingly. Many architectural and engineering firms, as well as contractors, are considered small businesses. Historic preservation projects often require specialized technical skills and knowledge, and the MHPG program increases opportunities for professionals to develop and hone skills in historic preservation, particularly in rural areas.

Moreover, the MHPG program aids in the revitalization of vacant or underutilized buildings, rendering them suitable for commercial use. In this way, the program contributes to the economic vitality of historic downtowns. Likewise, grants to history museums often contribute to job creation and increased visitation. The MHPG program's deliverables create and retain jobs, increases visitation to and livability of historic downtowns, and creates economic opportunities throughout Montana in both urban and rural areas.

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### **Bill Sponsor Notification**

The department notified House Bill 756 sponsor, John Fitzpatrick, regarding the proposed rules. Representative Fitzpatrick did not provide any comments.

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## **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person above or may be made by completing a request form at any rules hearing held by the department.

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## **Rule Reviewer**

April Armstrong

## **Approval**

Mandy Rambo, Deputy Director



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DEPARTMENT OF FISH, WILDLIFE AND PARKS

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-297.1

**Summary**

The department proposes this rulemaking to adopt and amend rules to implement 2025 legislation (SB 238, HB 96, HB 307, and HB 817), to repeal licensing agent and landowner preference rules, and to update and simplify rules concerning current department practices in licensing.

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**Hearing Date and Time**

Monday, November 10, 2025, at 10:00 a.m.

**Virtual Hearing Information**

Join Zoom Meeting

<https://mt-gov.zoom.us/j/86443841364?pwd=C6R0mdi8LqdwW9fqivZHT5NXUvTf3R.1>

Meeting ID: 864 4384 1364

Password: 037743

Dial by Telephone

+1 646 558 8656

Meeting ID: 864 4384 1364

Password: 037743

Find your local number: <https://mt-gov.zoom.us/j/kdYnGxOZeN>

Join by SIP

86443841364@zoomcrc.com

Join by H.323 (Polycom)

162.255.37.11##86443841364

### **Comments**

Comments may be submitted using the contact information below. Comments must be received by Wednesday, November 12, 2025, at 5:00 p.m.

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### **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Monday, November 3, 2025, at 5:00 p.m.

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### **Contact**

Emily Cooper  
406-444-2663  
Emily.Cooper@mt.gov

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### **General Reasonable Necessity Statement**

This proposal notice contains amended and new rules for implementing SB 238, HB 96, HB 817, and HB 307 from the 2025 legislative session. It proposes that the department repeal rules relating to licensing agents, as they no longer sell licenses on behalf of the department. This proposal also repeals the landowner preference for deer and elk, as the preference is now in statute at 87-2-735, MCA. ARM 12.3.514 is proposed to be amended to reflect that more FWP employees are qualified to provide free CWD testing and to make determinations if an animal is unfit for consumption. Finally, this proposal refines current rules to simplify FWP practices, clarifies bonus point usage, updates references to statutes that provide rulemaking authority, and identifies the statutes that the rules implement.

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### **Rulemaking Actions**

**AMEND**

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

### 12.3.501 DEFINITIONS

For purposes of this chapter:

- (1) "Bonus point" means the same as described in 87-2-117, MCA.
- (2) "Commission" means the Montana Fish and Wildlife Commission.
- (3) "Contiguous land" means land that is owned in fee title by the applicant and that is not interrupted by land owned by another person. ~~Land that is owned by the applicant that is interrupted by adjacent federal or state land may on an individual basis be considered as contiguous land if the individual leases the federal or state land.~~
- (4) "Department" means the Department of Fish, Wildlife and Parks.
- (5) "Drawing" means the random selection of licenses or permits when applications received exceed the quota set by the commission for a hunting district. The license or permit may include limitations on taking by sex, age, species, time period, or designated area.
- ~~(6)~~ "Employee" ~~means an individual who is paid by a landowner for services rendered and who has state, federal, or FICA taxes withheld from their pay.~~
- ~~(7)~~(6) "Game damage" means the same as described in 87-1-225, MCA.
- ~~(8)~~(7) "Land that is used by elk" means land that elk inhabit as documented by the department.
- ~~(9)~~(8) "Landowner preference" means a drawing that is conducted before the general drawings as described in 87-2-516, 87-2-705, 87-2-714, and 87-2-735, MCA, in which the landowners are randomly drawn for a portion of the quota as set by the commission.
- ~~(10)~~(9) "Landowner sponsor" means a landowner who meets the qualifications of 87-2-511, MCA, and these rules for licenses.
- ~~(11)~~(10) "License" means an electronic or hard copy document issued to an individual that grants the opportunity to hunt or fish for the species of animal.
- ~~(12)~~ "License agent" ~~means an entity that has received an appointment pursuant to 87-2-901, MCA.~~
- ~~(13)~~(11) "Party" means a group of two to five persons applying together to obtain a permit or license.

~~(14)~~(12) "Permit" means an electronic or hard copy document to be used in conjunction with the proper license expanding or restricting opportunities to hunt or fish for specific species of animals.

~~(15)~~(13) "Preference point" means the same as established in 87-2-115, MCA.

~~(16)~~(14) "Quota" means a set number of animals to be harvested, or licenses to be issued, within a specified land area (hunting district, administrative region, or state).

~~(17)~~(15) "Regional license quota" means the total quota established of hunting districts within a specific department administrative region.

~~(18)~~(16) "Super-tag" means licenses established under 87-1-271, MCA.

**Authorizing statute(s):** 87-1-201, ~~87-1-301~~, MCA

**Implementing statute(s):** 87-1-201, ~~87-1-301~~, MCA

#### **Reasonable Necessity Statement**

The proposed amendment updates definitions to match statutory and FWP processes, and repeals unnecessary repetition of statute.

### **12.3.502 FORMS OF IDENTIFICATION**

- (1) A valid state, federal, or tribal government-issued picture identification may be used to ~~verify residency~~ substantiate the required information when purchasing a resident license or permit.

**Authorizing statute(s):** ~~87-1-201~~, ~~87-2-106~~, MCA

**Implementing statute(s):** 87-2-106, MCA

#### **Reasonable Necessity Statement**

The proposed amendment clarifies the additional forms of identification accepted by FWP.

### **12.3.503 LIMITATION ON NUMBER OF HUNTING LICENSES**

- (1) When the commission sets a limitation or quota for the number of hunting licenses to be issued in any hunting district or other designated area, resident applicants shall receive at least 90% of the total hunting licenses to be issued for that game species in that district. When the number of resident applicants totals less than 90% of the quota for that district, all resident applicants shall receive a hunting license for that game species.
- (2) The remaining licenses will be issued to the nonresident applicants for that district by drawing. ~~Then, any remaining licenses for that district shall be sold as surplus or over the counter.~~

**Authorizing statute(s):** ~~87-1-304,~~ 87-1-201, 87-2-506, MCA

**Implementing statute(s):** 87-1-304, 87-2-506, 87-2-701, MCA

### **Reasonable Necessity Statement**

The proposed amendment strikes the reference to the distribution of surplus licenses process that is found in ARM 12.3.504.

### **12.3.510 APPRENTICE HUNTER CERTIFICATE**

- (1) An apprentice ~~hunter~~ must be accompanied by a mentor while hunting or trapping. The mentor must:
  - (a) meet the requirements of 87-2-810, MCA;
  - (b) possess a completed department-issued designation form;
  - (c) only accompany one apprentice at a time;
  - (d) remain within direct voice contact with the apprentice without the use of enhancement or transmittal devices, except prescription hearing aids; and
  - (e) remain within direct sight of the apprentice without the use of any magnifying or enhancing aids except prescription eyewear.
- (2) Apprentice hunters 15 years of age or younger are allowed to hunt during any specified statewide youth season as provided in the regulations.

**Authorizing statute(s):** 87-1-201, ~~87-1-301,~~ MCA

**Implementing statute(s):** 87-2-810, MCA

### Reasonable Necessity Statement

The proposed amendment reflects that apprentice certificates are now available to both hunters and trappers, as a result of HB 96 passing the 2025 Legislature.

#### 12.3.512 DONATED LICENSES

- (1) In accordance with 87-2-815, MCA, the nonprofit organization must provide a copy of the articles of incorporation to the department as verification of eligibility.
- (2) Donated licenses must be received by the department prior to the beginning of the hunting season in which they are applicable.
- (3) Applications must be submitted on a form supplied by the department.
- (4) Applications will be processed on a first come first served basis.
- (5) Licenses donated to specific organizations will be issued to the list of disabled veterans or disabled members of the armed forces provided by the organization to the department.

**Authorizing statute(s):** 87-2-815, MCA

**Implementing statute(s):** 87-2-815, MCA

### Reasonable Necessity Statement

The proposed amendment reflects changes to license donations, adding the ability to donate to specific organizations, as a result of HB 307 passing the 2025 Legislature.

#### 12.3.513 REPLACEMENT LICENSES AND PERMITS

- (1) A hunter may replace a department-issued hunting license or permit that is lost, stolen, or destroyed at a department office or any department license provider via the department's online licensing service.
- ~~(2) The hunter must appear personally at a department regional or area office or at headquarters in Helena, Montana during normal operating hours to replace a lost, stolen, or destroyed license or permit a second or subsequent time for the same species.~~
- ~~(3)~~(2) The fee for each replacement license or permit issued under this rule is \$5.

~~(4)~~(3) Licenses and permits seized pursuant to a law enforcement action are not considered to be lost, stolen, or destroyed and will not be replaced.

~~(5)~~(4) Replacement licenses and permits for animals deemed unfit for human consumption will be issued pursuant to ARM ~~12.3.404~~ 12.3.514.

**Authorizing statute(s):** 87-2-104, MCA

**Implementing statute(s):** 87-2-104, MCA

### **Reasonable Necessity Statement**

The proposed amendment is to reflect that licenses are issued electronically by FWP.

### **12.3.514 ANIMALS UNFIT FOR HUMAN CONSUMPTION**

- (1) The department will issue a replacement license or permit when and animal is deemed unfit for human consumption due to disease or prior injury.
- (2) A majority of an animal must be unfit for human consumption in order for a replacement license or permit to be issued.
- (3) The determination of whether an animal is unfit for human consumption is at the discretion of a department approved biologist or warden employee and may require a test completed in accordance with department-approved testing standards.
- (4) The animal must be surrendered as directed by department personnel.
- (5) Replacement licenses and permits will be issued at a department regional office, area office, or at the headquarters in Helena, Montana during normal operating hours. ~~Other license agents are unable to issue replacement licenses and permits.~~
- (6) If the animal was harvested using a combination license, the replacement license will be issued for only the portion of the license used to harvest the animal deemed unfit for human consumption.
- (7) The hunter must designate whether they chose to be issued the replacement licenses or permit for the current year or the next license year when requesting a replacement licenses or permit.
- (8) A replacement license or permit will not be issued if the lack of fitness for human consumption is due to the hunter's improper handling or care of the animal.



**Authorizing statute(s):** 87-2-104, MCA

**Implementing statute(s):** 87-2-104, MCA

### **Reasonable Necessity Statement**

The proposed amendment is to reflect that more FWP employees are qualified to conduct chronic wasting disease (CWD) testing and to make determinations that animals are unfit for consumption. The proposed amendment also removes reference to licensing agents who no longer issue licenses for FWP.

### **12.3.601 APPLICATION FOR DRAWINGS**

- (1) The application deadline for B-10 and B-11 license drawings is April 1.
- (2) The application deadline for elk and deer permit drawings is April 1.
- (3) The application deadline for moose, sheep, goat, and bison drawings is May 1.
- (4) The application deadline for elk B, deer B, antelope, and antelope B license and permit drawings is June 1.
- (5) Applications for youth licenses and permits are determined by the age of the child at the time of submitting the application.
- (6) All applications for participation in any permit or license drawing, except drawings under ARM 12.9.804A ~~12.9.801~~ (damage hunts) ~~provided for by these regulations~~ must be submitted by the expressed deadline.
- (7) No changes will be made after the department has received the application deadline.
- (8) If an application for any species is rejected by the department pursuant to this rule:
  - (a) the application will not be included in the drawing;
  - (b) the applicant will not be awarded a bonus point for that drawing for that species; and
  - (c) the drawing fee, preference point fee, bonus point fee, and any prerequisite licenses once the application is entered into the drawing, will be retained by the department.
- (9) Rejection of an application pursuant to this rule is equivalent to failure to apply.

**Authorizing statute(s):** 87-1-201, ~~87-1-304~~, 87-2-701, MCA

**Implementing statute(s):** 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

### **Reasonable Necessity Statement**

The proposed amendment is to correct a reference error to ARM 12.9.801 instead of ARM 12.9.804A.

### **12.3.603 BONUS POINTS**

- (1) Bonus points are non-refundable and non-transferable between applicants or species.
- (2) If an applicant for a permit or license drawing who has elected to participate in the bonus points program by paying the fee established in 87-2-113, MCA, is unsuccessful in the drawing their first choice opportunity, they shall retain be awarded the ~~species-specific~~ bonus point they purchased.
- (3) The department may only apply accumulated bonus points to an applicant's chance to obtain a license or permit during a drawing if the applicant purchases a bonus point when applying for the license or permit.
- (4) An applicant for a drawing with an unlimited quota will not be offered an opportunity to participate in the bonus points program for that license type in the same license year.
- ~~(3)~~(5) An applicant's bonus points accumulate until the applicant is successful in drawing a permit or license for a species in their first-choice district, including landowner preference applications.
- ~~(4)~~(6) If an applicant is successful in drawing a permit or license for a species, the applicant's bonus points are reduced to zero for that species only.
- ~~(5)~~(7) If the following special circumstances occur, an applicant who is successful in drawing a permit or license may retain their accumulated bonus points if the applicant:
  - (a) is a member of the armed forces and is either deployed outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) or deployed in response to a state or national emergency; or
  - (b) is affected by a catastrophic or major natural disaster or man-made event that requires the applicant's assistance as a member of a local, state, or federal management society.

~~(6)~~(8) A qualifying applicant under ~~(5)~~(7) must return the unused permit or license prior to the first day of the season applicable to the permit or license.

~~(7)~~(9) The director or designee may authorize exceptions for extenuating circumstances.

~~(8)~~(10) Applicants who lose hunting and fishing privileges through court action will lose accumulated bonus points for all species.

**Authorizing statute(s):** 87-1-201, ~~87-1-301~~, ~~87-2-117~~, MCA

**Implementing statute(s):** 87-2-113, 87-2-117, MCA

#### **Reasonable Necessity Statement**

The proposed amendment is to clarify the use of bonus points as suggested by a legislative audit.

#### **12.3.618 DEER PERMITS**

- (1) Residents may not apply for a deer permit without first purchasing an A-3 license.
- (2) Nonresidents must purchase a B-10 or B-11 license at the time of submittal of drawing applications.
- ~~(3) The department shall issue deer B licenses and deer permits as described in ARM 12.3.104 (landowner preference).~~

**Authorizing statute(s):** 87-1-304, MCA

**Implementing statute(s):** 87-1-304, MCA

#### **Reasonable Necessity Statement**

The proposed amendment is to remove the reference to ARM 12.3.104, which is proposed for repeal.

#### **12.3.619 ELK PERMITS**

- (1) The elk permit fees established in 87-2-704, MCA, are non-refundable. The department issues elk permits for landowner preference described in 87-2-705, MCA, according to the following policies and procedures:

- (a) The statutory requirement of 640 acres of contiguous land is used only to determine if the applicant is eligible to apply as a landowner.
  - (b) If license/permits are valid in a designated portion of a hunting district, some of the land owned by the applicant must be within the boundaries of that portion.
  - (c) Both resident and nonresident landowners must use the special drawing application provided by the department. The department shall verify that the applicant owns 640 acres, that it is contiguous land used by elk as determined by the department, and that the designee of the landowner preference is eligible.
  - (d) Partnerships may delegate landowner preference to members of immediate family, a partner or employee. Only one person may be delegated landowner preference for each sole proprietorship, partnership or corporation. A corporation may delegate the landowner preference to one shareholder.
  - (e) All applicants entitled to landowner preference will be considered in the preference drawings for elk. Unsuccessful landowner applicants to exceed 15% of a district will be entered into the regular drawings with their district choices.
- (2) Residents may not apply for an elk permit without first purchasing and A-5 elk license.
  - (3) Nonresidents must purchase the B-10 at the time of submittal of drawing applications.

**Authorizing statute(s):** ~~87-1-301, 87-2-702, 87-2-704~~, MCA

**Implementing statute(s):** ~~87-1-301, 87-2-704, 87-2-705~~, MCA

### **Reasonable Necessity Statement**

The proposed amendment is to reflect the current FWP and Montana Operations Manual (MOM) procedures.

### **12.3.621 MOOSE, SHEEP, AND GOAT - SEVEN-YEAR WAIT REQUIREMENT**

- (1) Applicants who are successful in drawing a moose, sheep, or goat license must finalize their purchase on or before August 1 of the current license year, except licenses that have an unlimited quota.

~~(1)(2)~~ Prior to On or before August 1 of the current license year, applicants who are successful in drawing a moose, sheep, or goat license may request to have their license successful application voided. A voided license application under this rule does not subject a hunter to the seven-year wait requirement when the applicant is:

- (a) a member of the armed forces and is either deployed outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) or deployed in response to a state or national emergency; or
- (b) affected by a catastrophic or major natural disaster or man-made event that requires the applicant's assistance as a member of a local, state, or federal management agency.

~~(2)(3)~~ Moose, sheep, and goat licenses that are not finalized before August 1, and applications which are voided ~~returned~~ under these circumstances, may be reissued to unsuccessful applicants for the original drawing.

**Authorizing statute(s):** 87-1-201, ~~87-1-301~~, MCA

**Implementing statute(s):** 87-2-702, MCA

#### **Reasonable Necessity Statement**

The proposed amendment is to update to the current FWP policy and practice.

#### **12.3.802 PROCEDURE FOR SUBMITTING PROPOSALS AND AWARDING AN AUCTION OR LOTTERY LICENSE**

- (1) The department will solicit and accept proposals from organizations to conduct auctions or lotteries for licenses.
- (2) Proposals for auctions or lottery licenses to be issued for the following license year must be received by the department's Licensing Bureau on or before July 15.
- ~~(3)~~ Organizations must submit an independent species-specific proposal for each auction or lottery license they apply for.

**Authorizing statute(s):** 87-1-201, ~~87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812~~, MCA

**Implementing statute(s):** 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

## **Reasonable Necessity Statement**

The proposed amendment is to update to the current commission policy and practice.

## **ADOPT**

The rules proposed to be adopted are as follows:

### **NEW RULE 1 (12.3.506) FREE SPECIAL PERMIT LICENSE FOR A PERSON UNDER THE AGE OF 18 WITH A LIFE-THREATENING ILLNESS**

- (1) To qualify for a free special permit license, an application must be completed and provided to the department. Applications must be submitted on a form supplied by the department and will be processed on a first-come, first-served basis.
- (2) Any charitable or nonprofit organization recommending a youth hunter with a life-threatening illness to receive a special permit license must provide a copy of their current federal tax status, such as an Internal Revenue Service determination letter, the organization's IRS Form 1023, the organization's articles of incorporation, or a statement from the state taxing body reflecting nonprofit or charitable status. The recommendation must include the youth hunter's name, and if applicable, the name of the adult or licensed Montana outfitter who will be representing the organization.

**Authorizing statute(s):** 87-2-805, MCA

**Implementing statute(s):** 87-2-805, MCA

## **Reasonable Necessity Statement**

NEW RULE 1 (ARM 12.3.506) is proposed to clarify the procedure to apply for a free special permit license for hunters under the age of 18 with a life-threatening illness, and to implement HB 817.

### **NEW RULE 2 (ARM 12.3.516) SUPPORTING BOWHUNTERS WITH DISABILITIES PROGRAM**

- (1) The department will distribute funds from the supporting bowhunters with disabilities account to a federally tax-exempt non-profit organized under 26 U.S.C. 501(c)(3) that assists a disabled hunter in acquiring modified archery equipment.

- (2) The disabled hunter must complete and qualify for a permit to modify archery equipment from the department. Forms to obtain the permit are available on the department's website and at regional offices.
- (3) The permit only allows modification of lawful archery tackle and must be used with a valid bow and arrow license, and appropriate hunting license.
- (4) The modified archery equipment allows a person with a disability to use archery tackle that supports the bow, and draws, holds, and releases the string to accommodate the individual's disability. Arrows are not exempt, and must meet the commission's requirements for the archery-only season.
- (5) Crossbows (including but not limited to horizontal, vertical, or gun-type stock) do not meet the definition of modified archery equipment and are not permitted.
- (6) Each application for reimbursement from the department must be accompanied by:
  - (a) receipts verifying each expenditure for audit purposes;
  - (b) proof of the nonprofit organization's current federal tax status, such as an Internal Revenue Service determination letter, the organization's IRS Form 1023, the organization's articles of incorporation, or a statement from the state taxing body reflecting nonprofit status; and
  - (c) the name and ALS number of the disabled hunter receiving the modified equipment.

**Authorizing statute(s):** Section 1, Chapter 563, Laws of 2025

**Implementing statute(s):** Sections 1 and 2, Chapter 563, Laws of 2025

#### **Reasonable Necessity Statement**

NEW RULE 2 (ARM 12.3.516) is proposed to clarify the procedure for organizations to apply for reimbursement for providing modified archery equipment to bowhunters with disabilities and to implement SB 238.

#### **REPEAL**

The rules proposed to be repealed are as follows:

#### **12.3.104 ESTABLISHMENT OF PRIORITY FOR LANDOWNERS IN ISSUANCE OF ANTELOPE OR DEER HUNTING LICENSES**

**Authorizing statute(s):** 87-1-304, MCA

**Implementing statute(s):** 87-1-304, MCA

**Reasonable Necessity Statement**

ARM 12.3.104 is proposed for repeal because it repeats a benefit found in statute, 87-2-735, MCA.

**12.3.205 REVIEW OF APPOINTMENTS**

**Authorizing statute(s):** 87-1-201, 87-2-901, MCA

**Implementing statute(s):** 87-2-901, 87-2-904, MCA

**Reasonable Necessity Statement**

ARM 12.3.205 through 12.3.235 are proposed for repeal because license agents no longer sell FWP licenses.

**12.3.209 REGULATIONS FOR ISSUANCE OF LICENSES**

**Authorizing statute(s):** 87-1-201, MCA

**Implementing statute(s):** 87-2-106, MCA

**Reasonable Necessity Statement**

ARM 12.3.205 through 12.3.235 are proposed for repeal because license agents no longer sell FWP licenses.

**12.3.210 DISCOUNT SALE OF HUNTING AND FISHING LICENSES PROHIBITED**

**Authorizing statute(s):** 87-1-201, MCA

**Implementing statute(s):** 87-2-901, 87-2-904, MCA

**Reasonable Necessity Statement**

ARM 12.3.205 through 12.3.235 are proposed for repeal because license agents no longer sell FWP licenses.



### **12.3.220 LICENSE AGENT APPLICATIONS**

**Authorizing statute(s):** 87-1-201, 87-2-901, 87-2-902, MCA

**Implementing statute(s):** 87-2-901, MCA

#### **Reasonable Necessity Statement**

ARM 12.3.205 through 12.3.235 are proposed for repeal because license agents no longer sell FWP licenses.

### **12.3.225 LICENSE AGENT ELECTRONIC FUNDS TRANSFER**

**Authorizing statute(s):** 87-1-201, 87-2-901, MCA

**Implementing statute(s):** 87-2-901, MCA

#### **Reasonable Necessity Statement**

ARM 12.3.205 through 12.3.235 are proposed for repeal because license agents no longer sell FWP licenses.

### **12.3.230 LICENSE AGENT DUTIES**

**Authorizing statute(s):** 87-1-201, 87-2-901, MCA

**Implementing statute(s):** 87-2-901, MCA

#### **Reasonable Necessity Statement**

ARM 12.3.205 through 12.3.235 are proposed for repeal because license agents no longer sell FWP licenses.

### **12.3.235 REVOCATION OR SUSPENSION OF LICENSE AGENT**

**Authorizing statute(s):** 87-1-201, 87-2-901, MCA

**Implementing statute(s):** 87-2-901, MCA

#### **Reasonable Necessity Statement**

ARM 12.3.205 through 12.3.235 are proposed for repeal because license agents no longer sell FWP licenses.

### **12.3.617 ANTELOPE LICENSES**

**Authorizing statute(s):** 87-2-706, MCA

**Implementing statute(s):** 87-2-706, MCA

#### **Reasonable Necessity Statement**

ARM 12.3.617 is proposed for repeal because it duplicates existing statute, 87-2-735, MCA.

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#### **Small Business Impact**

The small business impact of the proposed adoption, amendment, and repeal of the rules in this notice is to provide opportunities for nonprofit and charitable organizations to assist specific hunters in obtaining an experience in the field in Montana. There are no proposed increases or decreases in fees, but the likely number of organizations affected is approximately ten, based on legislative testimony. The agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses. Documentation of the small business impact analysis is available upon request.

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#### **Bill Sponsor Notification**

Rep. Fielder was contacted by legislative email on September 3, 2025, regarding HB 817 and HB 96, and had no suggested comments on the agency's proposed amendments to the above administrative rules.

Rep. Barker was contacted by legislative email on September 3, 2025, regarding HB 307 and had no suggested comments on the agency's proposed amendments to the above administrative rules.

Sen. Ellis was contacted by legislative email on August 14, 2025, regarding SB 238, and her comments were incorporated in the above proposed new rule.

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### **Interested Persons**

The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department, commission or board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Written requests may be mailed or delivered to the Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at <https://public.govdelivery.com/accounts/MTFWP/subscriber/new>.

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### **Rule Reviewer**

Jaime MacNaughton

### **Approval**

Christy Clark, Director



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-413.1**

**Summary**

Amendment of ARM 23.13.304, 23.13.703, 23.13.803, and 23.13.806 pertaining to certification of public safety officers and the minimum training standards for peace officers

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**Hearing Date and Time**

Thursday, October 30, 2025, at 10:00 a.m.

**Hearing Information**

Room 207 of the Karl Ohs Building, Montana Law Enforcement Academy, 2260 Sierra Road East, Helena, Montana

**Comments**

Concerned persons may submit their data, views, or arguments in writing to the contact information below. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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**Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 24, 2025, at 5:00 p.m.

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## Contact

Katrina Bolger  
(406) 444-9974  
kbolger@mt.gov  
Fax: (406) 444-9978

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 23.13.304 THE BASIC COURSES

- (1) The amount of training hours required in any basic public safety officer's course ~~will~~ must be approved by the council.
- (2) Students in any basic public safety officers' course are required to complete instruction in the prescribed subject areas as directed by the council.
- (3) The council will review ~~and approve~~ the curriculum for all basic public safety officers' courses for approval. The review may consist of examining and approving the course syllabus and/or a thorough review of individual course performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.
- (4) The council may approve changes from the course content established at the last review upon written application from the MLEA administrator, training agency, or training provider providing evidence that such change is compatible with the public interest.
- (5) Any public safety agency which provides or oversees a public safety officer basic course must report to the executive director any substantiated grounds for denial, sanction, suspension, or revocation of POST certification as outlined in these rules.
- (6) POST will, at least annually, audit every public safety course that exceeds 40 hours, except the reserve officer basic courses. POST will audit the records and documentation retained by the MLEA, training agency, or training provider.
- (7) A basic course which has been approved by a Montana state or local agency, and which is being administered by an accredited Montana college or university, must meet the following additional requirements:

- (a) The accredited Montana college or university curriculum must have the same training subjects and a minimum of the same total basic course hours as the Montana Law Enforcement Academy's Law Enforcement Officer Basic Course.
- (b) The Montana state or local agency must approve the curriculum and methods of the training, and then the basic course syllabus must be approved by the council:
  - (i) anytime the course syllabus changes; and
  - (ii) annually, even if the syllabus has not changed;
- (c) The approving Montana state or local public safety agency:
  - (i) must designate a public safety officer to oversee and audit the method of training and day-to-day operations of the course each time the course is provided;
  - (ii) must document and report all audits of the method and manner of training to POST; and
  - (iii) must provide the audit and any corrective action to the council to consider and take appropriate action at a regularly scheduled meeting, if deficiencies are noted in the audit regarding the method and manner of training.
- (d) It is the responsibility of the approving Montana state or local public safety agency to maintain documentation of compliance with these rules.
- (e) All required documentation must be made available to POST for the purpose of conducting its annual audit and any necessary random audits.
- (8) In addition to the provisions of this rule, every public safety officer basic course is subject to the requirements of ARM 23.13.301, and each student must meet the requirements of ARM 23.13.302 and 23.13.801.

**Authorizing statute(s):** 2-15-2029, MCA

**Implementing statute(s):** 2-15-2029, 44-4-403, MCA

### **Reasonable Necessity Statement**

During the 2025 Legislative Session, the Montana Legislature passed HB 589, which authorizes an accredited Montana college or university and a state or local public safety agency to offer a peace officer basic academy. That legislation further authorized the Montana POST Council to adopt rules to implement the change in law. The above changes are necessary for POST to

ensure that all peace officer basic courses offered to Montana public safety officers comport with Montana law and POST standards for peace officers.

### **23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR**

- (1) The POST Council will create, maintain, and adopt in public meetings a policy and procedure for processing and responding to allegations. The policy and procedure will be posted on POST's web site and made publicly available. It will comply with these rules and offer the director further guidance regarding the specific steps that the director and POST staff will take when responding to allegations.
- (2) Any allegation made against a public safety officer that states potential grounds for denial, sanction, suspension, or revocation of POST certification must initially be provided to the appointing authority of the officer in question for review and recommendation, unless the appointing authority is making the allegation. All allegations must be made in writing unless the director initiates the allegation. Anonymous allegations will not be considered unless the director determines that public safety may be threatened if POST takes no action on an anonymous allegation.
- (3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the appointing authority of the allegation. This requirement does not apply if the allegation has been made against the highest-ranking officer in the agency, who would otherwise constitute the appointing authority, or there is some reason to believe that the investigation or public safety would be put in danger by such a notification.
- (4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the appointing authority must give POST a notice of the appointing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and which may contain a recommendation from the appointing authority regarding whether POST should impose a sanction. If the appointing authority recommends POST impose a sanction, the appointing authority must state what sanction the appointing authority deems reasonable. POST shall consider but is not bound by the recommendation of the appointing authority. If available, a copy of the initial allegation made to the appointing authority and the appointing authority's written response must be forwarded to the director. The appointing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at the director's discretion.

- (5) After the appointing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation to be presented to the case status committee. If an allegation is received from an appointing authority, the executive director may, if appropriate under the circumstances, send a "Letter 1" (as described in the POST Council's policy and procedure adopted under (1)) to the officer prior to consultation with the case status committee, provided the director notify the committee of the Letter 1 as soon as practicable.
- (a) Any allegation submitted to the council must be submitted to the director or POST staff and may not be submitted to the full council or any individual member of the council.
  - (b) The allegation must provide at least the following information:
    - (i) the name, address, and telephone number of the individual making the allegation, which the director may keep confidential if the individual or public safety would be harmed by disclosure;
    - (ii) the name and appointing authority of the officer;
    - (iii) a complete description of the incident;
    - (iv) the remedy sought;
  - (c) A person making an allegation must use the allegation form available from POST staff or submit an allegation in substantially similar format.
  - (d) An appointing authority or ~~the Montana Law Enforcement Academy~~ a public safety agency which provides or oversees a public safety officer basic course may submit a written allegation on the agency's letterhead with supporting documents that the agency deems appropriate.
- (6) The director may initiate an allegation, based on good cause and reliable information, and must follow the procedure set forth in this rule as if initiated by any other individual, including but not limited to submitting the complaint to the appointing authority.
- (7) After an allegation has been received or has been initiated by the director, the director, in consultation with the case status committee and contested case counsel for POST, will determine whether to dismiss the allegation, or open a preliminary investigation and correspond with the respondent in writing.
- (a) All such correspondence must be copied to the appointing authority, unless the exception noted in (3) applies.
  - (b) The policy provided in (1), will outline the number and nature of these letters.
  - (c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the Case Status Committee, the director, and contested case



counsel to gather more information, and allow the parties to reach an informal resolution.

- (8) After an allegation is made by or filed with the director, and upon a majority vote of the case status committee, the director, contested case counsel for POST, or other POST staff or designees will conduct a preliminary investigation of the complaint.
- (9) Following the review and preliminary investigation of an allegation, communication with the respondent, communication with the appointing authority, and consultation with counsel for POST, and based upon a majority vote of the case status committee, the director may take any appropriate action, including but not limited to the following:
  - (a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA contested case hearing stage under this subsection is not subject to approval by the council, but must be approved by a majority vote of the Case Status Committee;
  - (b) accept the voluntary surrender of a certificate;
  - (c) make one of the following findings, upon a majority vote of the Case Status Committee:
    - (i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to further the investigation; the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) involved.
    - (ii) Not sustained: POST's review or investigation failed to discover sufficient evidence to prove or disprove the allegations.
    - (iii) Sustained: POST's review or investigation disclosed a preponderance of evidence to prove the allegation(s).
    - (iv) Unfounded: POST's review or investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.
    - (v) Exonerated: POST's review or investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully and in a manner consistent with the agency's policy and procedures.
  - (d) issue the appropriate denial, sanction, suspension, or revocation of a certificate upon a majority vote of the Case Status Committee;

- (e) if a denial, sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA. Such notice must be mailed to the officer's last known mailing address, unless the officer consents to receiving email notification;
  - (f) the officer may request contested case proceedings pursuant to 44-4-403, MCA and MAPA, as outlined in ARM 23.13.704.
- (10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for denial, sanction, suspension, or revocation pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the hearing examiner must grant a stay based on an application by the director or counsel for POST. The director will notify the case status committee of the stay as soon as practicable.
- (11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's appointing authority must also be maintained in the officer's POST file.

**Authorizing statute(s):** 2-4-201, 2-15-2029, MCA

**Implementing statute(s):** 2-4-201, 2-15-2029, 44-4-403, MCA

### **Reasonable Necessity Statement**

See the Reasonable Necessity Statement regarding the amendments to ARM 23.13.304.

### **23.13.803 CODE OF ETHICS**

- (1) All public safety officers who have been appointed by any appointing authority in Montana, or who have been certified by POST, or who have attended ~~an MLEA a~~ POST-approved basic class must abide by the code of ethics contained herein.
- (2) All public safety officers hired or sworn before this rule's effective date are also bound by the code of ethics contained in this rule. Continued service as a public safety officer in Montana constitutes an agreement to be bound by this code of ethics. Failure to comply with or violation of any part of the code of ethics may be grounds for denial, suspension, sanction, or revocation of any POST certificate.

- (3) The public safety officers' code of ethics is:
- (a) "My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged;
  - (b) "I will perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct;
  - (c) "I will enforce or apply all laws and regulations appropriately, courteously, and responsibly;
  - (d) "I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person;
  - (e) "Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise;
  - (f) "I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and will disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties;
  - (g) "I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice;
  - (h) "I will be responsible for my professional development and will take reasonable steps to improve my level of knowledge and competence;
  - (i) "I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

**Authorizing statute(s):** 2-15-2029, MCA

**Implementing statute(s):** 2-15-2029, 7-32-303, 44-4-403, MCA

### **Reasonable Necessity Statement**

See the Reasonable Necessity Statement regarding the amendments to ARM 23.13.304.

### **23.13.806 PUBLIC SAFETY OFFICER APPOINTMENT, EDUCATION, AND CERTIFICATION STANDARDS**

- (1) Except as provided in (2), the basic and basic equivalency training standards set forth in 7-32-303, MCA, are applicable to all public safety officers, where an appropriate basic course or basic equivalency course exists in the public safety officer's field. ~~The council may approve a location other than the Montana Law Enforcement Academy for the basic or basic equivalency courses in the following disciplines: detention/corrections officer; probation and parole officer; misdemeanor probation/pretrial services officer; public safety communications officer; and coroner.~~
- (2) The standards set forth in (1) do not apply to reserve officers.
- (3) A public safety officer's appointing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of the public safety officer.

**Authorizing statute(s):** 2-15-2029, MCA

**Implementing statute(s):** 7-32-303, 44-4-403, MCA

#### **Reasonable Necessity Statement**

See the Reasonable Necessity Statement regarding the amendments to ARM 23.13.304.

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#### **Small Business Impact**

The proposed rule changes affect public safety officers and not small businesses. Therefore, this rulemaking will not have a significant and direct effect on small businesses.

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#### **Bill Sponsor Notification**

The bill sponsor was contacted by mail and electronic mail on September 23, 2025. The bill sponsor received and responded to POST's correspondence.

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## **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person listed in contact information or may be made by completing a request form at any rules hearing held by the department.

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## **Rule Reviewer**

Alwyn Lansing

## **Approval**

Jesse Slaughter, Chair, POST Council



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-110.1**

**Summary**

Updates to Workers' Compensation rules including removal of billing prohibition for medical status forms, implementation of House Bill 428, and annual update of the Utilization and Treatment Guidelines

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**Hearing Date and Time**

Thursday, November 6, 2025, at 1:00 p.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/81672552694>

Meeting ID: 816 7255 2694; Password: 1529968275

Dial by Telephone: +1 646 558 8656

Meeting ID: 816 7255 2694; Password: 1529968275

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 30, 2025, at 5:00 p.m.

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## Contact

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 24.29.1513 DOCUMENTATION REQUIREMENTS

- (1) A treating physician or emergent or urgent care provider must provide the insurer the following documents within seven days of the first claim-related visit:
  - (a) initial report;
  - (b) medical status form; and
  - (c) treatment bill (CMS 1500).
- (2) The treating physician must prepare a treatment plan. The treatment plan must be provided to the insurer as soon as possible. The treating physician must provide any changes to the treatment plan to the insurer.
- (3) To be eligible for payment, the provider must provide to the insurer:
  - (a) CMS 1500;
  - (b) functional improvement status with respect to the ~~treatment plan~~ functional goals; and
  - (c) applicable treatment notes.

- (4) Documentation, excluding (1)(b), is considered to be a service to the injured worker and no charge is allowed for the documentation required by this rule.
- (5) The treating physician must report immediately to the insurer the date total disability ends or the date the injured worker is released to return to work.

**Authorizing statute(s):** 39-71-203, MCA

**Implementing statute(s):** 39-71-704, MCA

### **Reasonable Necessity Statement**

The proposed amendments to (3)(b) are necessary to provide consistent language with the proposed amendments to ARM 24.29.1515, described in the reasonable necessity statement below.

The proposed amendments to (4) are necessary to remove the prohibition on offering reimbursement for the medical status form which allows insurers to incentivize a provider's timely and accurate completion of the medical status form. A provider's timely and accurate completion of a medical status form helps facilitate safe and timely return-to-work efforts that benefit workers, employers, and insurers.

### **24.29.1515 FUNCTIONAL IMPROVEMENT STATUS**

- (1) Functional improvement status must ~~identify objective medical findings of the claimant's medical status, and note the effect of the medical services (positive, neutral, or negative), with respect to the goals of the treatment plan~~ consist of objective findings of the claimant's functional status, and document the effect of interventions (positive, neutral, or negative) on functional goals. The functional improvement status can be sufficiently documented on the Medical Status Form. The Montana Utilization and Treatment Guidelines outline the standards for functional improvement.

**Authorizing statute(s):** 39-71-203, MCA

**Implementing statute(s):** 39-71-704, 39-71-1036, MCA



## Reasonable Necessity Statement

The proposed amendments are necessary because the 2025 Legislature passed House Bill 428, 2025 Mont. Laws Chapter 428, effective October 1, 2025, that amends the requirements for medical status forms found in 39-71-1036, MCA. To protect patient privacy, medical status forms are no longer required to contain a claimant's medical treatment plan or medications prescribed to a claimant. The proposed amendments are necessary because a medical status form is designed to communicate the claimant's functional status, improvement, and goals, and not a claimant's medical treatment plan.

## 24.29.1534 PROFESSIONAL FEE SCHEDULE

- (1) An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. The fee schedules are available online at the department's web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:
  - (a) the conversion factors established by the department in ARM 24.29.1538;
  - (b) modifiers, listed on the department's website;
  - (c) the Montana unique code, MT001, described in (9);
  - (d) the Montana unique code, MT003, adopted and described in ARM 24.29.1433; and
  - (e) the Montana unique code, MT009, for referral to a vocational rehabilitation counselor for on-site job evaluation with the injured worker to assist in returning him/her to work either to his/her time of injury job or a new job/position.
- (2) The conversion factors, the Current Procedural Terminology (CPT) codes, and the relative value unit (RVU) used depend on the date the medical service, procedure, or supply is provided. The reimbursement amount is generally determined by finding the proper CPT code in the Resource-Based Relative Value Scale (RBRVS) then multiplying the RVU for that code by the conversion factor.
- (3) The insurer shall pay 100 percent of the usual and customary charges for dental codes. The insurer shall pay a minimum of 75 percent of the usual and customary charges for dental codes D6010 through D6199.
- (4) Where a permitted procedure is not covered by these rules or uses a new code, the insurer must pay 75 percent of the usual and customary fee charged by the provider to nonworkers' compensation patients.

- (5) The maximum fee that an insurer is required to pay for a particular procedure is listed on the department web site and was computed using the RVU in the total facility or nonfacility column of the RBRVS times the conversion factor, except as otherwise provided for in these rules.
- (6) Professionals, including those who furnish services in a hospital, critical access hospital, ambulatory surgery center, or other facility setting must bill insurers using the CMS 1500, with the exception of physical therapy, occupational therapy, and speech therapy services provided on an outpatient basis and billed on a UB04. Dental providers may bill insurers using the American Dental Association (ADA) Dental Claim Form.
- (7) Each provider is to limit services to those which can be performed within the provider's scope of license. For nonlicensed providers, the insurer is not required to reimburse above the related CPT codes for appropriate services.
- (8) When billing the services listed below, the Montana unique code, MT001, must be used and a separate written report is required describing the services provided. The reimbursement rate for this code is 0.54 RVUs per 15 minutes with time documented by the provider. These requirements apply to the following services:
  - (a) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor;
  - (b) a report associated with nonphysician conferences required by the payor;
  - (c) completion of a job description or job analysis form requested by the payor; or
  - (d) written questions that require a written response from the provider; ~~excluding the Medical Status Form.~~
- (9) Where a service is listed as "by report," the fee charged may not exceed the usual and customary fee charged by the provider to nonworkers' compensation patients.
- (10) It is the responsibility of the provider to use the proper procedure, service, and supply codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.
- (11) Copies of the RBRVS are available from the publisher. Ordering information may be obtained from the department.

**Authorizing statute(s):** 39-71-203, MCA

**Implementing statute(s):** 39-71-704, MCA

## Reasonable Necessity Statement

The proposed amendments to (8)(d) are necessary to remove the prohibition on offering reimbursement for the medical status form, as described in the reasonable necessity statement for ARM 24.29.1513(4).

## 24.29.1611 UTILIZATION AND TREATMENT GUIDELINES

- (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. The applicable utilization and treatment guidelines are available electronically on the department's website. The Montana Guidelines incorporated by reference apply as follows:
  - (a) for medical services provided on or after ~~July 1, 2023~~ [the effective date of this rule adoption]: "Montana Utilization and Treatment Guidelines, ~~8th~~ 9th edition, ~~2023~~ 2025"; and
  - (b) all prior Utilization and Treatment Guidelines starting July 1, 2011, are available on the department's website or by contacting the department to request a copy.
- (2) The utilization and treatment guidelines adopted in (1) are to be read in conjunction with the Centers for Disease Control publication, "CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2022."
- (3) When providing treatment for primary and secondary medical services to an injured worker, all health care providers shall use the Montana Guidelines adopted by reference in (1).
  - (a) In cases where treatment(s) or procedure(s) are recommended by the Montana Guidelines, and treatment is provided in accordance with the guidelines, prior authorization is unnecessary unless the Montana Guidelines specify otherwise.
  - (b) The department recognizes that medical treatment may include deviations from the Montana Guidelines as individual cases dictate. The provider or interested party shall follow the procedure for prior authorization under ARM 24.29.1621 for cases in which treatments or procedures are requested that are:

- (i) not specifically addressed or recommended by the Montana Guidelines for a body part that is covered by a guideline;
  - (ii) after maximum medical improvement; or
  - (iii) beyond the duration and frequency limits set out in the guidelines.
- (c) An insurer is not responsible or liable for treatment(s) or procedure(s) as set out in (3)(b) unless:
  - (i) prior authorization is obtained from the insurer pursuant to 39-71-704, MCA, and in accordance with ARM 24.29.1621; or
  - (ii) the treatment(s) or procedure(s) were provided in a medical emergency.
- (d) For those body parts not included in one of the guideline chapters, providers must apply and follow the general guideline principles that are found at the beginning of each chapter, and an insurer is liable for reasonable medical treatment.
- (4) All insurers shall routinely and regularly review claims to ensure that care is consistent with the Montana Guidelines adopted by reference in (1) and (7).
- (5) The provisions of this rule apply to medical services provided on or after July 1, 2011.
- (6) Effective April 1, 2019, the formulary adopted in ARM 24.29.1616 is considered to be a part of the Montana Guidelines.

**Authorizing statute(s):** 39-71-203, 39-71-704, MCA

**Implementing statute(s):** 39-71-704, MCA

### **Reasonable Necessity Statement**

The proposed amendments to (1)(a) adopting the 2025 Montana Guidelines are necessary under the statutory mandate in 39-71-704, MCA. In addition to the comprehensive update to the shoulder injury chapter, the department is proposing updates to other chapters to make specific sections consistent with the Guidelines updated in 2023 and 2025. Specifically, the department is proposing updates to the psychologist licensure requirements for cognitive behavioral therapy, and language clarification in the positive patient response general guideline principle. Each proposed change in the 9th edition of the Montana Guidelines is available for review on the department's website.

### **Small Business Impact**

The group or class of small businesses that will likely be affected by the proposed rule changes include small business insurance providers of workers' compensation coverage, and small-business medical providers that work as treating physicians for workers' compensation claimants, including physicians, physician assistants, chiropractors, osteopaths, dentists, and physical therapists.

The proposed rule changes will likely have a positive effect on small businesses because insurance providers can now provide an incentive for treating physicians to complete the medical status forms. The timely and accurate completion of medical status forms helps to facilitate safe and timely return-to-work efforts. Safe and timely return-to-work efforts contribute to cost-savings for insurance providers and medical providers in the workers' compensation context.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted on April 15, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](https://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Quinlan L. O'Connor

### **Approval**

Sarah Swanson, Commissioner



**MONTANA  
ADMINISTRATIVE  
REGISTER**

**ALTERNATIVE HEALTH CARE BOARD  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-128.1**

**Summary**

Revising rules for the Alternative Health Care Board

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**Hearing Date and Time**

Tuesday, November 4, 2025, at 1:00 p.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/89670596727>

Meeting ID: 896 7059 6727; Password: 1281553119

Dial by Telephone: +1 646 558 8656

Meeting ID: 896 7059 6727; Password: 1281553119

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Tuesday, October 28, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

In furtherance of the Governor's Executive Order 1, establishing a priority for reducing red tape, simplifying administrative rules, and generally ensuring the ease of use by the public of the administrative rules, this rulemaking is reasonably necessary. The Alternative Health Care Board (board) identifies a number of areas where simplification and shortening of the administrative rules is feasible.

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## **Rulemaking Actions**

### **AMEND**

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### **24.111.415 APPLICATION FOR LICENSURE**

- (1) Each application for licensure from the board must include:
  - (a) a completed application form;
  - (b) the initial license fee; and
  - (c) verification of applicable educational requirements.
- (2) An applicant licensed in any other jurisdiction at any time shall cause the other jurisdictions to submit a current verification of licensure directly to the board.

- (3) An applicant may voluntarily withdraw their application by written request if the application has not appeared on a board agenda. Application fees are not refundable.
- (4) Incomplete applications expire after one year.

**Authorizing statute(s):** 37-1-131, 37-13-201, 37-26-201, 37-27-105, MCA

**Implementing statute(s):** 37-1-131, 37-13-302, 37-26-402, 37-26-403, 37-27-201, 37-27-202, 37-27-203, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to amend the authorizing and implementing statutes to provide that this rule applies to all license types of the board and proposed amendments to ARM 24.111.502 and 24.111.604. New (4) incorporates the substance of ARM 24.111.604 that is otherwise proposed to be removed, and provides clarity to applicants as to the timelines for completing applications.

### **24.111.501 MINIMUM NATUROPATHIC MEDICAL EDUCATION STANDARDS**

- (1) The board may approve a naturopathic medical college degree if it is obtained from a naturopathic medical program which meets substantially equivalent standards to those of the Council on Naturopathic Medical Education. ~~the following minimum naturopathic medicine educational standards:~~
  - (a) ~~The naturopathic medical college is or was incorporated in the United States under the laws of the state of its residence as a nonprofit, nonproprietary institution exempt from taxation by the IRS, due to its devotion to educational purposes. Foreign country naturopathic medical colleges must possess equivalent qualifications to those required of U.S. naturopathic medical colleges.~~
  - (b) ~~The naturopathic medical college has or had formal authority from the appropriate state or provincial governmental agency to grant an N.D. or N.M.D. degree, and has as its major mission the education of naturopathic doctors and their preparation for licensing.~~
  - (c) ~~The naturopathic medical college's objective shall be clearly stated and should address the preparation of naturopathic physicians to provide patient care and for licensing by state or provincial authorities. The curriculum shall~~



encompass a minimum of four academic years of a full-time resident program of academic and clinical study of naturopathic medicine.

- (d) Educational standards shall include instruction in a core program which requires each student to demonstrate competence in each of the following substantive content areas:
  - (i) The basic sciences program must include in-depth study and courses on human anatomy, physiology, biochemistry, pathology, pharmacology and pharmacognosy. A basic sciences program may also include, without limitation, courses in public health and naturopathic philosophy. Total hours in basic sciences must be a minimum of 1000 clock hours, with 12 clock hours equal to one quarter credit, or equivalent semester credit.
  - (ii) The clinical sciences program must include preparation of the student to diagnose the causes of human ailments and effective treatment of them using naturopathic medications and methods. A clinical sciences program may also include, without limitation, courses in acupuncture and office management. Total hours in clinical sciences must be a minimum of 1200 clock hours with 12 clock hours equal to one quarter credit, or equivalent semester credit. The clinical sciences program must include:
    - (A) diagnostic courses, which shall include physical, clinical, laboratory and radiological;
    - (B) therapeutic courses, which shall include materia medica (botanical medicine, homeopathy, emergency drugs), nutrition, physical medicine (including but not limited to naturopathic manipulative therapy and hydrotherapy), and psychological counseling;
    - (C) specialty courses, which shall include organ systems (cardiology, dermatology, endocrinology, EENT, gastroenterology, orthopedics, neurology), human development (gynecology, natural childbirth, obstetrics, pediatrics, geriatrics), jurisprudence, medical emergencies, and minor surgery.
  - (iii) The clinical practicum program shall give the student experience in a clinical setting, under licensed supervision, in all aspects of naturopathic practice. The student shall, at a minimum, have primary care responsibility in the institution's teaching clinic and preceptorships in one or more practicing physician's offices. Total hours in clinical practicum must be a minimum of 1000 clock hours, with 12 clock hours equal to one quarter credit, or equivalent semester credit.

- (e) ~~The naturopathic medical college must have an identifiable faculty. The faculty must have advanced or professional degrees in either the subject being taught or in related areas. The faculty should be involved in continuing education and provisions should exist in teaching loads to encourage academic excellence through research, publication, attendance at conventions and educational symposia.~~
- (f) ~~The board reserves the right to evaluate individual applications as to their compliance with equivalent naturopathic medical educational standards, on a case-by-case basis, in the sole discretion of the board.~~

**Authorizing statute(s):** 37-26-201, MCA

**Implementing statute(s):** 37-26-201, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to amend this rule to recognize that the national accreditation standards of the Council on Naturopathic Medical Education are applicable to any program seeking recognition for training by the board.

### **24.111.502 NATUROPATHIC LICENSING BY EXAMINATION**

- (1) ~~Each application for licensure must include:~~
  - (a) ~~a completed application form;~~
  - (b) ~~initial application fee;~~
  - (c) ~~verification of the applicable education requirements; and~~
  - (d) ~~proof of successful passage of the Naturopathic Physician Licensing Examination (NPLEX) as provided in (2).~~
- (2)(1) Except as provided in (3)(2), all applicants for naturopathic physician licensure in Montana must have passed the Naturopathic Physicians Licensing Examination (NPLEX):
  - (a) Part I – Biomedical Science;
  - (b) Part II – Core Clinical Science;

- (c) Part II – Clinical Elective Pharmacology Examination; and
  - (d) Part II – Clinical Minor Surgery Examination.
- ~~(3)~~(2) An applicant seeking licensure under this rule based upon a licensure examination other than the NPLEX examinations listed in ~~(2)~~(1) may apply to the board for acceptance of a substantially equivalent examination.
- (3) Applicants from another jurisdiction who have not passed the NPLEX Part II – Clinical Elective Pharmacology Examination will be required to do so prior to licensing.

**Authorizing statute(s):** 37-1-131, 37-26-201, MCA

**Implementing statute(s):** 37-1-131, 37-1-304, 37-26-402, 37-26-403, MCA

#### **Reasonable Necessity Statement**

There is reasonable necessity to amend the catchphrase to clarify applicability of the rule to naturopathic physicians. There is reasonable necessity to strike (1) because all applicants will be subject to ARM 24.111.415. Proposed new (3) incorporates the relevant provision of ARM 24.111.503, which is proposed to be repealed. This proposal aims to place all examination requirements applicable to naturopathic physicians in a single rule. The implementation citations are proposed to be updated to incorporate reciprocal licensure.

#### **24.111.606 MINIMUM EDUCATION AND EXPERIENCE REQUIREMENTS FOR DIRECT-ENTRY MIDWIFE APPLICANTS AFTER JANUARY 1, 2020**

- (1) ~~An~~ In addition to those requirements set forth in 37-27-201, MCA, an applicant must be a NARM Certified Professional Midwife, demonstrated by:
- (a) graduation from a MEAC-accredited program; or
  - (b) completing the Portfolio Evaluation Process through NARM; and
  - (c) passing the NARM examination with a scaled score of 75.
    - (i) Applicants must have the examination score reported to the board from NARM.

- (ii) Applicants who have failed the examination twice must file a remedial plan with the board, which includes arrangements for securing further professional training and experience prior to each examination attempt.
- (2) ~~In addition to NARM certification, applicants must show:~~
  - ~~(a) observation of ten births; and~~
  - ~~(b) participation as the primary birth attendant at five continuous care births, shown by the signed birth certificate as primary birth attendant, an affidavit from the birth mother; or documented records from the person who supervised the births to include prenatal records, birth records, and postpartum records.~~

**Authorizing statute(s):** 37-27-105, MCA

**Implementing statute(s):** 37-27-105, 37-27-201, 37-27-202, MCA

#### **Reasonable Necessity Statement**

There is reasonable necessity to strike the clause “after January 1, 2020” from the title of the rule because it is applicable to all applicants due to the passage of time. There is reasonable necessity to strike (2) because the NARM certification requirements have changed since the adoption of this rule, leading to confusion among license applicants as to the correct observation and attendance numbers required. As a result, while NARM certification is required, applicants must also comply with the statutory obligations. Section (2) is repealed to the extent its requirements were in conflict with the statutory requirements.

#### **24.111.607 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS AFTER JANUARY 1, 2020**

- (1) Applicants who are acquiring practical experience shall apply for an apprentice license.
- (2) Applicants must provide proof of enrollment in a MEAC-accredited program or enrollment in NARM's Portfolio Evaluation Process at the time of application.
- (3) Midwife apprentices must work under the supervision of a currently licensed direct-entry midwife, a certified nurse midwife, a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance, or a physician.

- (a) Apprenticeship supervisors must be registered with NARM as preceptors.

**Authorizing statute(s):** 37-27-105, MCA

**Implementing statute(s):** 37-27-105, 37-27-201, 37-27-205, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to strike the phrase “after January 1, 2020” from the title due to the passage of time and because of other amendments proposed in this rulemaking. In particular, this rule is proposed to apply to all apprentices moving forward, as it does due to the passage of time, while ARM 24.111.602 is proposed for repeal because it is no longer applicable.

### **24.111.612 VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES**

- (1) A licensed direct-entry midwife shall not assume primary responsibility for prenatal care and/or birth attendance for women who have had a previous cesarean section, unless all of the following conditions are met:
  - (a) An informed consent statement, on a form furnished by the board, shall be signed by all prospective VBAC parents and the licensee, and retained in the licensee's records. The form shall include:
    - (i) VBAC educational information, including history of VBAC and client's own personal information;
    - (ii) associated risks and benefits of VBAC at home;
    - (iii) a workable hospital transport plan;
    - (iv) alternatives to VBAC at home;
    - (v) other information as required by the board.
  - (b) A workable hospital transport plan must be established for home VBAC. The plan shall include:
    - (i) provision for physician/hospital backup, e.g., through the physician/hospital policy on backup;
    - (ii) place of birth within 30 minutes of transport to the nearest hospital able to perform an emergency cesarean;

- (iii) readily available phone numbers for physician backup and nearest hospital, in writing, in client's records;
  - (iv) phone contact with nearest hospital at onset of labor and prior to any transport to notify that transport is in progress; and at conclusion of home birth if no transport is necessary.
- (c) Licensee shall obtain prior doctor/hospital cesarean records, in writing, prior to acceptance of the woman as a client, and shall analyze the indication for the previous cesarean, and retain the records and a written assessment of the physical and emotional considerations in licensee's files. Records which show a previous classical uterine/vertical incision, any other uterine scars into the endometrium, or less than 18 months between last surgery to the next delivery are contraindications to VBAC at home, and shall require immediate transfer of care of the client. If a licensee is unable to obtain written records, the licensee shall not retain the woman as a client.
- (d) VBAC deliveries shall be performed by a fully licensed midwife (not an apprentice licensee), skilled with VBAC support, able to assess true complications and emergencies, to be present from the onset of active labor, throughout the immediate postpartum period.
- (2) ~~The board shall conduct a "sunset" review, including the necessity for and safety of the VBAC rule, on or about May, 2001, or five years from the effective date of this rule.~~

**Authorizing statute(s):** 37-27-105, MCA

**Implementing statute(s):** 37-27-105, 37-27-311, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to strike (2) because it is no longer applicable. The board must review its rules periodically.

### **24.111.2102 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS**

- (1) Naturopaths must obtain 15 continuing education credits each renewal period, except as provided in ~~(8) ARM 24.111.817 (24.111.2110)~~. At least five of the credits must be in naturopathic pharmacy. If the naturopath holds a naturopathic

childbirth specialty certification as provided in ARM 24.111.510, an additional five credits per renewal period must be obtained in obstetrics. One hour of education (excluding breaks) equals one continuing education credit.

- (2) No more than three continuing education credits per renewal period will be approved for preparation of and for a single presentation of a program meeting the requirements of this rule.
- (3) Continuing education programs will not be preapproved by the board or staff.
- (4) In order to be approved, a continuing education program must:
  - (a) have significant intellectual or practical content;
  - (b) relate to substantive naturopathic medicine topics within the scope of practice for naturopaths in Montana, except as otherwise provided herein;
  - (c) be presented by person(s) qualified by practical experience and academic credentials; and
  - (d) issue certificates of completion (except nonlive programs) and program agendas/syllabi containing the following information:
    - (i) title and date(s) of program;
    - (ii) name(s) and qualification of presenter(s);
    - (iii) outline of program content;
    - (iv) credit hours of instruction;
    - (v) description of presentation delivery (i.e., live or nonlive); and
    - (vi) identification of sponsoring organization.
- (5) Continuing education programs from other professions or academic disciplines are eligible for approval if substantially related to the role of naturopaths.
- (6)(3) In accordance with 37-1-131, MCA, compliance with this rule shall be attested to by the naturopath on the renewal application. The board will conduct random audits after each renewal period closes of 20 percent of all naturopaths with renewed licenses, for documentary verification of compliance. Documentary evidence of program completion must be maintained by the naturopath for a period of two years for audit purposes. Documentary evidence of completion of nonlive programs (e.g., internet, videotape, audiotape, DVD) may be in the form of proof that the naturopath passed an exam on the program content, a certificate of completion, or the naturopath's notes summarizing the program content.
- (7) No continuing education credits are required for a naturopath renewing the naturopath's Montana license for the first time.

- ~~(8) Continuing education credit will not be approved for programs:~~
- ~~(a) relating to general business or economic issues other than workers' compensation; or~~
  - ~~(b) primarily intended to educate the general public such as CPR and first aid other than programs relating to public health issues.~~

**Authorizing statute(s):** 37-1-131, 37-1-319, 37-26-201, MCA

**Implementing statute(s):** 37-1-131, 37-1-141, 37-1-306, MCA

### **Reasonable Necessity Statement**

Sections (3) through (5), portions of (6), and (7) and (8) are proposed to be stricken because they are substantively proposed to be incorporated into ARM 24.111.817 (24.111.2110), applicable to all license types.

### **24.111.2103 DIRECT-ENTRY MIDWIVES CONTINUING EDUCATION REQUIREMENTS**

- (1) Midwives must obtain 14 continuing education credits each renewal period except as provided in ~~(7)~~ ARM 24.111.817 (24.111.2110). One hour of education (excluding breaks) equals one continuing education credit.
- (2) No more than three continuing education credits per renewal period will be approved for preparation of and for a single presentation of a program meeting the requirements of this rule.
- ~~(3) Continuing education programs will not be preapproved by the board or staff.~~
- ~~(4) In order to be approved, a continuing education program must:~~
  - ~~(a) have significant intellectual or practical content;~~
  - ~~(b) relate to substantive midwifery topics within the scope of practice for direct-entry midwives in Montana, except as otherwise provided herein;~~
  - ~~(c) be presented by person(s) qualified by practical experience and academic credentials; and~~
  - ~~(d) issue certificates of completion (except nonlive programs) and program agendas/syllabi containing the following information:~~



- (i) title and date(s) of program;
  - (ii) name(s) and qualification of presenter(s);
  - (iii) outline of program content;
  - (iv) credit hours of instruction;
  - (v) description of presentation delivery (i.e., live or nonlive); and
  - (vi) identification of sponsoring organization.
- (5) Continuing education programs from other professions or academic disciplines are eligible for approval if substantially related to the role of midwives.
  - (6) Documentary evidence of completion of nonlive programs (e.g., internet, videotape, audiotape, DVD) may be in the form of proof that the midwife passed an exam on the program content, a certificate of completion, or the midwife's notes summarizing the program content. Documentary evidence of program completion must be maintained by the midwife for a period of two years for audit purposes.
  - (7) No continuing education credits are required for a midwife renewing his/her Montana license for the first time.
  - (8) Continuing education credit will not be approved for programs:
    - (a) relating to general business or economic issues other than workers' compensation; or
    - (b) primarily intended to educate the general public such as CPR and first aid other than programs relating to public health issues.

**Authorizing statute(s):** 37-1-131, 37-1-319, MCA

**Implementing statute(s):** 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

### **Reasonable Necessity Statement**

Sections (3) through (8) are proposed to be stricken because they are substantively proposed to be incorporated into ARM 24.111.817 (24.111.2110), applicable to all license types.

## 24.111.2301 UNPROFESSIONAL CONDUCT

- (1) ~~It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing their scope of practice. In addition, the~~ The following is unprofessional conduct:
- ~~(a) failing to cooperate with an investigation of the board by failing to respond in full or in part;~~
  - ~~(b)~~(a) failing to adequately supervise auxiliary staff to the extent that the patient's physical health or safety is at risk;
  - ~~(c) practicing while the license is suspended, revoked, or expired;~~
  - ~~(d) offering, undertaking or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand from the board;~~
  - ~~(e)~~(b) abandoning, neglecting, or otherwise physically or emotionally abusing a client or patient requiring care;
  - ~~(f) intentionally or negligently causing physical or emotional injury or abuse to a client or patient in a clinical setting, or sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or no related to the licensee's practice;~~
  - ~~(g)~~(c) operating under unsanitary conditions after a warning from the board or consistently maintaining an unsanitary office;
  - ~~(h) failure by a midwife to maintain current and valid certifications in adult and infant cardiopulmonary resuscitation and neonatal resuscitation as provided by 37-27-201, MCA;~~
  - ~~(i) prescribing a scheduled drug without a current DEA registration.~~

**Authorizing statute(s):** 37-1-131, 37-1-319, 37-13-201, 37-26-201, 37-27-105, MCA

**Implementing statute(s):** 37-1-141, 37-1-316, 37-1-319, 37-13-201, 37-26-201, 37-27-105, MCA

### Reasonable Necessity Statement

There is reasonable necessity to amend this rule because it is duplicative of statutory provisions, particularly as amended by House Bill 435 (2025). The lead phrase is duplicative of 37-1-316(1)(v), MCA. Subsection (1)(a) is duplicative of 37-1-316(1)(p), MCA. Subsection (1)(c)

duplicates 37-13-301, MCA (acupuncture), 37-26-401, MCA (naturopathy), and 37-27-301, MCA (midwifery), all of which require licensure to engage in the practices defined by statute. Subsection (1)(d) duplicates 37-1-316(1)(p), MCA, to the extent it violates the requirement to respond to requests from the board; it may additionally duplicate 37-1-316(1)(f) and (g), MCA, to the extent a treatment is based on false information. Subsection (1)(f) is duplicative of 37-1-316(1)(b), MCA. Subsection (1)(h) duplicates 37-27-201, MCA. Subsection (1)(i) is duplicative of 37-1-316(1)(v), MCA.

## **TRANSFER AND AMEND**

The rules proposed to be transferred and amended are as follows, stricken matter interlined, new matter underlined:

### **24.111.815 (24.111.2115) CONTINUING EDUCATION FOR ACUPUNCTURISTS**

- (1) Each acupuncture licensee shall earn 30 ~~clock~~ hours of accredited continuing acupuncture education during each two-year licensing period. ~~Clock hours or contact hours~~ Hours shall be the actual number of hours during which instruction was given.
- (2) Aside from training hours, acupuncturists may obtain CE as follows:
  - (a) A~~a~~ maximum of eight ~~clock~~ hours may be given for the first-time preparation of a new course, in-service training workshop, or seminar which is related to the enhancement of acupuncture practice, values, skills, and knowledge; or
  - (b) a maximum of eight ~~clock~~ hours credit may be given for the preparation by the author or authors of a professional acupuncture paper published for the first time in a recognized professional journal; or given for the first time at a statewide or national professional meeting; and
  - (c) a licensee may claim five hours of self-study.
- (3) If a licensee completes more than 30 hours of continuing education in a two-year licensing period, excess hours in an amount not to exceed 15 hours may be carried forward to the next two-year licensing period.
- (4) Approved continuing education includes:
  - (a) courses accredited by the National Certification Commission for Acupuncture and Oriental Medicine;
  - (b) courses sponsored by a state acupuncture association or an acupuncture school; and
  - (c) teaching acupuncture in an accredited academic or continuing education program.

- ~~(4)~~(5) Any licensee may apply for a hardship exemption from the continuing acupuncture education requirements of these rules by filing a statement with the board setting forth good faith reasons why he or she is unable to comply with these rules and an exemption may be granted by the board.
- (5) Continuing education is not required for licensees renewing their license for the first time.

**Authorizing statute(s):** 37-1-131, 37-1-319, 37-13-201, MCA

**Implementing statute(s):** 37-1-131, 37-1-306, 37-13-201, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to transfer this rule to subchapter 21 so that all continuing education rules of the board are located together. References to “clock hours” are proposed to be removed in favor of simple hours of training or study. Recognition of approved training providers and self-study are proposed to be transferred to this rule so that a single rule governs CE requirements. This should ease the use of the rules for licensees. Section (5), concerning CE requirements for first time renewers, is proposed to be included in ARM 24.111.817 (24.111.2110), so that the requirements for obtaining and auditing CE are in a single rule.

### **24.111.817 (24.111.2110) ACCREDITATION, APPROVAL, AND STANDARDS AND AUDITS**

- (1) Continuing education programs must:
- (a) have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as an acupuncturist; and
  - (b) constitute an organized program of learning ~~dealing with in~~ matters directly related to the practice of ~~acupuncture the licensee~~, professional responsibility, or ethical obligations of ~~acupuncturists the licensee~~.
- (2) ~~Approved continuing education includes:~~
- (a) ~~courses accredited by the National Commission for the Certification of Acupuncture and Oriental Medicine;~~
  - (b) ~~courses sponsored by a state acupuncture association or an acupuncture school; and~~

- (c) ~~teaching acupuncture in an accredited academic or continuing education program.~~
- (3) ~~Licensees may claim five hours of self-study toward meeting the requirements of ARM 24.111.815.~~
- (2) Continuing education credit will not be approved for programs:
  - (a) relating to general business or economic issues other than workers' compensation; or
  - (b) primarily intended to educate the general public such as CPR and first aid, other than programs relating to public health issues.
- (3) The department is authorized to audit CE requirements and shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.
- (4) All CE must be documented to show proof of completion. The licensee is responsible for maintaining CE records for one year following the renewal cycle reporting period and for making the records available upon request. Documentation must include the following information:
  - (a) licensee name;
  - (b) course title and description of content;
  - (c) presenter or sponsor;
  - (d) course date(s); and
  - (e) number of CE hours earned.
- (5) No continuing education is required for a first license renewal.

**Authorizing statute(s):** 37-1-131, 37-1-319, 37-13-201, 37-26-201, MCA

**Implementing statute(s):** 37-1-131, 37-1-306, 37-13-201, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to transfer this rule so that all continuing education requirements of the board are located together. Sections (2) and (3) are proposed to be removed from this rule and adopted into the rule for continuing education for acupuncturists. New proposed (2) is incorporated from the generally applicable requirements of ARM 24.111.2102 and 24.111.2103. New proposed (3) and (4) are proposed to be incorporated from ARM 24.111.819

and applicable to all license types of the board. New proposed (5) incorporates the requirements from all rules of this board that those renewing their licenses for the first time need not obtain CE. This rule is proposed to be the rule of general applicability for standards and audit of continuing education.

## **ADOPT**

The rules proposed to be adopted are as follows:

### **NEW RULE 1 (24.111.420) SUBSTANTIAL EQUIVALENCY**

- (1) The board adopts and incorporates by reference the 2025 substantial equivalency list for the Alternative Health Care Board publication. The publication is available on the board's website.
- (2) The board intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

### **Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill (HB) 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.

While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. HB 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the board is proposing to adopt NEW RULE 1. The board has compared current licensure standards of the fifty United States for board licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards. The list will be published on the board's website. The board will analyze other states' licensing standards annually, and update the published list as needed.

## **REPEAL**

The rules proposed to be repealed are as follows:

### **24.111.409 INACTIVE STATUS**

**Authorizing statute(s):** 37-1-131, 37-1-319, 37-26-201, 37-27-105, MCA

**Implementing statute(s):** 37-1-131, 37-1-319, MCA

#### **Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because it is rarely used and not needed. As a result, maintaining the inactive license type is costly to other licensees, without marked benefit. There are currently three licensees in inactive status under the provisions of this rule. Those licensees will have the option to regain active status or give up their licenses.

### **24.111.503 LICENSING OF APPLICANTS BY ENDORSEMENT**

**Authorizing statute(s):** 37-1-131, 37-26-201, MCA

**Implementing statute(s):** 37-1-131, 37-1-304, MCA

#### **Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because it is duplicative of 37-1-304, MCA, with the exception of the requirement to take the Clinical Elective Pharmacology Examination. That requirement is proposed to be included in ARM 24.111.502.

### **24.111.512 NATUROPATHIC SCOPE OF PRACTICE**

**Authorizing statute(s):** 37-1-131, 37-26-201, MCA

**Implementing statute(s):** 37-26-201, MCA

**Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because it is not necessary for the board to have a rule which adopts a governing statute or another of its own rules.

**24.111.601 MINIMUM DIRECT-ENTRY MIDWIFE EDUCATION STANDARDS**

**Authorizing statute(s):** 37-27-105, MCA

**Implementing statute(s):** 37-27-201, MCA

**Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because it is no longer necessary. The substance of licensing applications is retained in ARM 24.111.606, which is more simply written and has been in place for applicants after January 1, 2020. As a result, in the interest of shortening, simplifying, and easing the use of the administrative rules, this rule is proposed to be repealed.

**24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS**

**Authorizing statute(s):** 37-1-131, 37-27-105, MCA

**Implementing statute(s):** 37-1-131, 37-27-105, 37-27-201, 37-27-205, 37-27-321, MCA

**Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because it is no longer necessary because of ARM 24.111.607.

**24.111.603 DIRECT-ENTRY MIDWIFE PROTOCOL STANDARD LIST REQUIRED FOR APPLICATION**

**Authorizing statute(s):** 37-1-131, 37-27-105, MCA

**Implementing statute(s):** 37-1-131, 37-27-201, MCA



**Reasonable Necessity Statement**

See the statement of reasonable necessity for ARM 24.111.601.

**24.111.604 LICENSING BY EXAMINATION**

**Authorizing statute(s):** 37-27-105, MCA

**Implementing statute(s):** 37-27-201, 37-27-202, 37-27-203, MCA

**Reasonable Necessity Statement**

See the statement of reasonable necessity for ARM 24.111.601.

**24.111.605 LICENSURE OF OUT-OF-STATE APPLICANTS**

**Authorizing statute(s):** 37-1-131, 37-27-105, MCA

**Implementing statute(s):** 37-1-304, 37-27-201, 37-27-202, 37-27-203, MCA

**Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because its substance duplicates 37-1-304, MCA, and applications are governed generally pursuant to ARM 24.111.415.

**24.111.819 AUDIT AND CE REPORTING REQUIREMENTS**

**Authorizing statute(s):** 37-1-131, 37-1-319, 37-13-201, MCA

**Implementing statute(s):** 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-13-201, MCA

**Reasonable Necessity Statement**

Reasonable necessity exists to repeal this rule because it is proposed to be incorporated into ARM 24.111.817 (24.111.2110) with applicability to all license types.

### **Small Business Impact**

This rulemaking is proposed to impact the licensees of the Alternative Health Care Board. The rules are primarily intended to simplify, shorten, and clarify the administrative rules of the board to permit easier use by licensees and the public. This is accomplished by striking duplicative and unnecessary language and through reorganization.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor for HB 246 (2025) was contacted on July 29, 2025, and the primary bill sponsor for HB 435 (2025) was contacted on August 19, 2025, both by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Quinlan L. O'Connor

### **Approval**

Sarah Swanson, Commissioner

### **Approval**

Sheehan Ednie-Rosen, DEM, Chair, Alternative Health Care Board



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-146.1**

**Summary**

Home inspector licensure

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**Hearing Date and Time**

Thursday, November 6, 2025, at 9:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/87136812182>

Meeting ID: 871 3681 2182; Password: 8452069580

Dial by Telephone: +1 646 558 8656

Meeting ID: 871 3681 2182; Password: 8452069580

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 30, 2025, at 5:00 p.m.

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## Contact

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## General Reasonable Necessity Statement

House Bill (HB) 225 established home inspectors as licensees rather than registrants. This change reflects the need to ensure public safety and health are protected by establishing clearer licensing guidelines and vesting the department with authority to discipline licensees—thus keeping bad actors from doing further harm. This rulemaking is necessary to effectuate the requirements of HB 225 and to eliminate provisions from the rules which are no longer necessary due to the specific provisions of code applicable to licensees under Title 37, MCA. Because the bill has an effective date of January 1, 2026, these rules are proposed to take effect on that date.

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## Rulemaking Actions

### TRANSFER AND AMEND

The rules proposed to be transferred and amended are as follows, stricken matter interlined, new matter underlined:

#### **24.33.406 (24.152.XXX) FEE SCHEDULE**

- (1) The following fees are charged by the department for home inspection businesses:
  - (a) initial application \_ \$80.00
  - (b) renewal application \_ 80.00
  - (c) ~~reinstatement of suspended registration 40.00~~
  - (d) ~~change of address no charge~~

- ~~(e) change of home inspection worker roster no charge~~
- (2) All fees are nonrefundable.

**Authorizing statute(s):** ~~39-9-103, MCA~~ [HB 225, Section 2]

**Implementing statute(s):** ~~39-9-206, MCA~~ [HB 225, Section 2]

### **Reasonable Necessity Statement**

There is reasonable necessity to strike (1)(c) through (e) because it is not necessary to state that a licensee address change is free of charge. The reinstatement of a suspended registration is subject to disciplinary authority of the department, and thus cannot be specified in rule. Finally, worker rosters are no longer applicable. Because home inspection is a license, each inspector must be licensed individually, rather than working under a roster by a single registrant.

### **24.33.411 (24.152.XXX) INITIAL AND RENEWAL APPLICATIONS FOR HOME INSPECTION REGISTRATION INSPECTOR LICENSE**

- (1) ~~In order to be registered by the department, a home inspection business shall complete a registration application and pay the registration fee as provided in ARM 24.33.406. Applicants for licensure must submit a complete application form provided by the department, including all required fees and documentation.~~
- (2) ~~An incomplete application will be deemed denied after 30 days. Within six months of the deemed denial, an applicant may submit the required information for consideration of the application. After six months, the applicant must reapply.~~
- (3) ~~Before a registration expires, a home inspection business may renew its registration by applying to the department and paying the required fee.~~
- (4) ~~Application contents are public record open to inspection, except for personally identifiable information protected from public disclosure.~~

**Authorizing statute(s):** ~~39-9-103, 39-9-212, MCA~~ [HB 225, Section 2]

**Implementing statute(s):** ~~39-9-212, MCA~~ [HB 225, Section 2, Section 3]

## Reasonable Necessity Statement

Amendments are necessary to this rule because applications for licensure are subject to the general provisions of Title 37, MCA. As such, while it is necessary to specify that applications must be in the prescribed form and there is a required fee, the remainder of the rule is not necessary.

### **24.33.431 (24.152.XXX) HOME INSPECTOR EXAMINATIONS AND COMPREHENSIVE EDUCATION COURSES**

- (1) Any organization wishing to be approved by the department for the purposes of offering ~~an examination for registration~~ comprehensive home inspection instruction must apply to the department for approval ~~of its examination~~. The organization must demonstrate that its ~~examination is psychometrically valid, and~~ instruction covers at least the following topics:
  - (a) roofing;
  - (b) exterior;
  - (c) interior;
  - (d) structural;
  - (e) electrical;
  - (f) plumbing;
  - (g) heating and cooling (HVAC);
  - (h) insulation;
  - (i) fireplace and chimney; and
  - (j) ethical business practices, professional standards, and reports.
- ~~(2) Any organization wishing to be approved by the department for the purposes of offering a comprehensive home inspection instruction for home inspectors consisting of at least 40 hours of instruction must apply to the department for recognition. The organization must demonstrate that its educational program is comprehensive and covers at least the topics required for examination in (1).~~
- ~~(3)~~(2) Any organization wishing to be approved by the department for the purposes of offering a comprehensive home inspection instruction for home inspectors must also demonstrate that it conducts a valid assessment of students' knowledge and understanding of the subject matter being taught in order to demonstrate successful completion. The organization shall describe in detail how the assessment is made, and the criteria by which a student is deemed to have successfully completed the educational program.

- (4) ~~A list of organizations approved by the department to offer home inspector examinations is available by contacting the department's home inspection program, and can also be found at the department's web site.~~
- (5)(3) A list of formal home inspection educational programs approved by the department is available by contacting the department's home inspection program, and can also be found at the department's web site.

**Authorizing statute(s):** ~~39-9-103, 39-9-212, MCA~~ [HB 225, Section 2]

**Implementing statute(s):** ~~39-9-212, MCA~~ [HB 225, Section 3]

### **Reasonable Necessity Statement**

There is reasonable necessity to amend this rule because examination is no longer required for home inspector licensure. Instead, license applicants must have completed 40 hours of a department-approved training. To provide clarity to the public and potential trainers as to the requirements to obtain departmental approval, this rule is modified.

### **ADOPT**

The rule proposed to be adopted is as follows:

### **NEW RULE 1 SUBSTANTIAL EQUIVALENCY**

- (1) The department adopts and incorporates by reference the 2025 substantial equivalency list for the home inspectors publication. The publication is available on the program's website.
- (2) The department intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

### **Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill (HB) 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.

While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. HB 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the program is proposing to adopt NEW RULE 1. The program has compared current licensure standards of the fifty United States for licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the program's initial approved list of states having substantially equivalent licensing standards. The list will be published on the program's website. The department will analyze other states' licensing standards annually, and update the published list as needed.

### **REPEAL**

The rules proposed to be repealed are as follows:

#### **24.33.401 DEFINITIONS**

**Authorizing statute(s):** 39-9-102, 39-9-212, MCA

**Implementing statute(s):** 39-9-212, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because no term specified remains necessary following the transfer of home inspector from registration to licensure, and many of the terms are no longer used in these rules.



#### **24.33.416 APPROVAL OF APPLICATIONS**

**Authorizing statute(s):** 39-9-103, 39-9-212, MCA

**Implementing statute(s):** 39-9-212, MCA

##### **Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because it is not necessary to specify the means of submission of license applications in rule. In addition, the period of licensure will be set forth, as with all license types, in ARM 24.101.413, which will be amended in a separate rulemaking.

#### **24.33.421 REGISTRATION REQUIRED FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTORS**

**Authorizing statute(s):** 39-9-103, 39-9-212, 39-71-203, MCA

**Implementing statute(s):** 39-9-212, 39-71-417, MCA

##### **Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because it is no longer applicable. As an occupational license is required before an individual is able to perform home inspection work, it is not necessary to specify who must be on a roster or which individuals must have a license. As set forth in HB 225, section 3, "an individual may not practice home inspection without a home inspection license."

#### **24.33.441 DUTY TO UPDATE ROSTER AND BUSINESS INFORMATION – SUSPENSION – REINSTATEMENT OF REGISTRATION**

**Authorizing statute(s):** 39-9-103, 39-9-212, MCA

**Implementing statute(s):** 39-9-212, MCA

**Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because rosters of home inspectors will no longer exist, and address update timelines are specified in statute. Moreover, the specified penalties are no longer applicable.

**24.33.461 RECOGNITION OF CONTINUING EDUCATION COURSES**

**Authorizing statute(s):** 39-9-103, 39-9-212, MCA

**Implementing statute(s):** 39-9-212, MCA

**Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because continuing education is not required. Nonetheless, HB 225, Section 3(2)(b) requires licensees to maintain “membership in a national home inspection association.” As such, to the extent a national association requires continuing education to maintain membership, licensees may be required to complete education under the rules set forth by that organization.

**24.33.471 PENALTIES – CIVIL FINES – INJUNCTIVE RELIEF**

**Authorizing statute(s):** 39-9-103, 39-9-212, MCA

**Implementing statute(s):** 39-9-206, 39-9-212, 39-9-301, MCA

**Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because fines and unprofessional conduct are set forth in statute.

**24.33.475 DISPUTE RESOLUTION PROCESS**

**Authorizing statute(s):** 2-4-201, 39-9-103, 39-9-212, MCA

**Implementing statute(s):** 2-4-603, 39-9-212, MCA

### **Reasonable Necessity Statement**

There is reasonable necessity to repeal this rule because the appeals process is spelled out in Title 37, chapter 1, part 4, MCA, and need not be repeated in rule.

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### **Small Business Impact**

The department anticipates that current home inspector registrants, and businesses employing them, will be impacted by this rulemaking implementing HB 225. The primary effects on these individuals and businesses are from the legislation itself, rather than from this proposed rule amendment. The department additionally anticipates that the public will benefit from the consumer protection aspects of licensure, which will allow the department to consider and impose disciplinary action against licenses where appropriate.

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### **Bill Sponsor Notification**

The primary sponsor was contacted on April 18, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](https://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Quinlan L. O'Connor

### **Approval**

Sarah Swanson, Commissioner



**MONTANA  
ADMINISTRATIVE  
REGISTER**

**BOARD OF PHARMACY  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-174.1**

**Summary**

Implementing House Bills (HB) 246, 414, and 794 and Senate Bill (SB) 456

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**Hearing Date and Time**

Friday, October 31, 2025, at 11:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/81718023198>

Meeting ID: 817 1802 3198; Password: 1487061148

Dial by Telephone: +1 646 558 8656

Meeting ID: 817 1802 3198; Password: 1487061148

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 24, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

The Board of Pharmacy is implementing several bills passed by the 2025 Legislature. The 2025 Legislature passed House Bills 246, 414, and 794 and Senate Bill 456. HB 246 amends the definition of substantial equivalency for licensing purposes and requires boards to review and adopt standards for substantial equivalency.

HB 414 standardizes licensing terms for provisional and temporary licenses across all licensing boards. The board is updating its technician licensing requirements to comply with the passage of HB 414 and clarifying provisional licensing for pharmacy technicians under the age of 18.

HB 794 amends the pharmacy practice act, repealing requirements that pharmacies using technicians file utilization plans and changes with the board, incorporating the amended definition of wholesale distribution regarding the four distributor license types, allowing for nonpharmacy facilities to dispense medical devices, and modernizing language.

SB 456 amended the medical practitioner dispensing statutes. More specific reasonable necessity statements follow the rules.

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## **Rulemaking Actions**

### **AMEND**

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

## **24.174.301 DEFINITIONS**

- (1) "Airborne particulate cleanliness classification" means the level of cleanliness defined by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) "Classification of Air Cleanliness" (ISO 14644-1) for Class 5, Class 7, and Class 8.
  - (a) ISO Class 5 is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air;
  - (b) ISO Class 7 is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air; and
  - (c) ISO Class 8 is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air.
- (2) "Beyond use date" (BUD) means the date after which the preparation may not be dispensed or administered to a patient. BUD also means expiration date.
- (3) "Biological safety cabinet" means a ventilated cabinet with an inward airflow for personnel protection; a downward, High Efficiency Particulate Arresting (HEPA) filtered, laminar airflow for product protection; and HEPA filtered exhaust system for environmental protection.
- (4) "Board of Pharmaceutical Specialties" (BPS) means an independent nongovernmental certification body that provides recognition of persons involved in the advanced practice of pharmacy specialties through development and administration and a certification process that is consistent with public policy regarding the credentialing of healthcare professionals.
- (5) "Chart order" means a lawful order entered on the chart or a medical record of a patient or resident of a facility by a practitioner, or his or her designated agent, for a drug or device and shall be considered a prescription.
- (6) "Class 100 environment" means an atmospheric environment which contains fewer than 100 particles 0.5 microns in diameter per cubic foot of air, according to Federal Standard 209E.
- (7) "Clean room" means an environment in which the concentration of airborne particles is controlled and monitored with parameters including high efficiency particulate air (HEPA) filtered airflow, pressurization, temperature, and humidity.
- (8) "Clinical practice experience," for purposes of issuing a clinical pharmacist practitioner endorsement, means working in a pharmacy practice setting which includes at least 50 percent of time spent in:
  - (a) communication with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;

- (b) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to optimize patient care;
  - (c) identifying, assessing, and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of the therapeutic plan;
  - (d) conducting physical assessment applicable to the area of practice, evaluating patient problems, and ordering and monitoring medications, and/or laboratory tests in accordance with established standards of practice;
  - (e) referring patients to other healthcare professionals as appropriate;
  - (f) integrating relevant diet, exercise, and other non-drug therapy with pharmaceutical care;
  - (g) retrieving, evaluating, utilizing, and managing data and professional resources;
  - (h) documenting interventions and evaluating outcomes; and
  - (i) integrating national standards for the quality of healthcare.
- (9) "Collaborative practice agreement" is defined as set forth in ARM 24.174.524.
- (10) "Compounded sterile preparation" (CSP) means:
- (a) a preparation prepared according to the manufacturer's labeled instructions and other manipulations when preparing sterile products that expose the original contents to potential contamination, and includes all preparations compounded in a sterile environment; or
  - (b) a preparation containing nonsterile ingredients or employing nonsterile components and devices that must be sterilized before administration.
- (11) "Cytotoxic" means a pharmaceutical agent capable of killing living cells.
- (12) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.
- (13) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.
- (14) "Device" is defined in ~~37-2-101, 37-7-101, MCA, and is required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician" or "Rx only."~~
- (15) "Drug kit" means a secured kit stored outside of a pharmacy containing those drugs which may be required to meet the short-term therapeutic need of patients within an institution not having an in-house pharmacy or 24-hour access to dispensing services, and which would not be available from any other authorized source in

sufficient time, and without which would compromise the quality of care of the patient.

- (16) "Drug order" means a written or electronic order issued by an authorized practitioner, or a verbal order promptly transcribed, for the compounding and dispensing of a drug or device to be administered to patients within a facility and shall be considered a prescription.
- (17) "Drug room" means a secure, lockable temperature-controlled location within a facility that does not have an institutional pharmacy and which contains drugs and devices for administration to patients within the facility pursuant to a valid drug order.
- (18) "Electronic prescription" means a prescription that is generated on an electronic application and is transmitted to a pharmacy as an electronic data file. Controlled substance prescriptions for Schedules II through V shall be transmitted in accordance with DEA requirements as outlined in 21 CFR Part 1300.
- (19) "Electronic signature" means a confidential personalized method of affixing a signature to an electronic document that will guarantee the identity of the prescriber.
- (20) "Emergency drug cart" or "crash cart" means a secure lockable cart or container in an inpatient setting that stores drugs and devices necessary to meet the immediate therapeutic needs of a patient and which cannot be obtained from any other authorized source in sufficient time to prevent harm.
- (21) "Facility" means an outpatient center for surgical services, a hospital and/or long-term care facility, or a home infusion facility.
- (22) "Floor stock" means prescription drugs not labeled for a specific patient, which are maintained at a nursing station or other hospital department other than the pharmacy, and which are administered to patients within the facility pursuant to a valid drug order. Floor stock shall be maintained in a secure manner pursuant to written policies and procedures, which shall include, but not be limited to, automated dispensing devices.
- (23) "Formulary" means a current compilation of pharmaceuticals authorized for use within the institution by representatives of the medical staff and pharmacy department.
- (24) "Home infusion facility" means a facility where parenteral solutions are compounded and distributed to outpatients for home infusion pursuant to a valid prescription or drug order.
- (25) "Immediate use" means a preparation compounded pursuant to the conditions in ARM ~~24.174.1121~~ 24.174.841 and whose administration must begin within one hour of preparation.



- (26) "Institutional pharmacy" means that physical portion of an institutional facility where drugs, devices, and other material used in the diagnosis and treatment of injury, illness, and disease are dispensed, compounded, and distributed to other healthcare professionals for administration to patients within or outside the facility, and pharmaceutical care is provided.
- (27) "Internship" means the practical experiences required to provide an intern, as defined in 37-7-101, MCA, with the knowledge and practical experience necessary for professional licensure as a pharmacist.
- (28) "Internship period" means 300 Introductory Pharmacy Practice Experience (IPPE) hours, and 1,440 Advanced Pharmacy Practice Experience (APPE) hours of practical experience in an approved pharmacy, hospital, or other facility or location relevant to the pharmacy profession. The intern may acquire the internship hours concurrently with school attendance in approved courses, introductory pharmacy practice experience, and advanced pharmacy practice experience, or demonstration projects in the Pharm.D. program. The intern may acquire a maximum of 48 hours experience per calendar week.
- (29) "Labeling" means the process of preparing and affixing a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and Montana law or rule.
- (30) "Laminar airflow hood" (LAF) means a workspace where the work surface is subjected to a constant HEPA filtered airflow that is directed towards the user.
- (31) "Long-term care facility" has the same meaning as provided in 50-5-101, MCA, and means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals, or that provides personal care.
- (32) "Medical gas" means any gaseous substance that meets medical purity standards and has application in a medical environment. Examples of medical gases include, but are not limited to, oxygen, carbon dioxide, nitrous oxide, cyclopropane, helium, nitrogen, and air.
- (33) "Medical gas distributor" is a person engaged in the manufacture, processing, packaging, labeling, or wholesale distribution, as defined in 37-7-602, MCA, of a medical gas to a person other than a consumer or patient.
- (34) "Medical gas supplier" is a person engaged in selling, transferring, dispensing, or delivering to a patient or a patient's agent one or more doses of medical gas in the manufacturer's or distributor's original container for subsequent use by the patient.
- (35) "Multi-dose vial" means a vial of liquid medication intended for parenteral administration, whether by injection or infusion, that contains more than one dose of medication; is labeled as containing more than one dose of medication by the

manufacturer; and typically contains an antimicrobial preservative to help prevent the growth of bacteria.

- (36) "Night cabinet" means a secure locked cabinet or other enclosure located outside the pharmacy, containing drugs which authorized personnel may access in the absence of a pharmacist.
- (37) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for consumer use in accordance with the requirements of the laws and rules of Montana and the federal government.
- (38) "Outpatient center for surgical services" is as defined at 50-5-101, MCA.
- (39) "Parenteral" means a sterile preparation of drugs for injection through one or more layers of skin.
- (40) "Pharmacist-in-charge" means a pharmacist licensed in Montana who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy, who assures that the pharmacy and all pharmacy personnel working in the pharmacy have current and appropriate licensure and certification, and who is personally in full and actual charge of such pharmacy. The pharmacist-in-charge at an out-of-state mail service order pharmacy does not have to be licensed in Montana.
- (41) "Preceptor" means a pharmacist or other approved individual who meets those requirements for the supervision and training of an intern. A preceptor shall have overall responsibility for the required training of the intern.
- (42) "Provisional pharmacy" means a pharmacy licensed by the Montana Board of Pharmacy and includes, but is not limited to, federally qualified health centers as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.
- (43) "Qualified patients" mean patients who are uninsured, indigent, or have insufficient funds to obtain needed prescription drugs.
- (44) "Remote pharmacy" means a licensed pharmacy at which prescriptions may be filled or transmitted to a central hub pharmacy for filling and subsequent delivery to the remote site or the patient's home. Patient counseling by a pharmacist may occur at this site.
- (45) "Remote telepharmacy dispensing machine site" means a licensed site containing prescription inventory which is secured in an automated dispensing device machine or system and which has access to its parent pharmacy and ~~registered~~ licensed pharmacists via computer, video, and audio link at all times during business hours.
- (46) "Remote telepharmacy site" means a licensed site staffed by a ~~registered~~ licensed pharmacy technician with access to its parent pharmacy and ~~registered~~ licensed pharmacists via computer, video, and audio link at all times during business hours.

- (47) "Risk levels for sterile preparations" means the three risk levels of CSP recognized by the United States Pharmacopeia (USP) in USP Chapter 797 "Pharmaceutical Compounding - Sterile Preparations" that are based on the probability of contamination by microbial, chemical, or physical agents. Pursuant to the conditions set forth in ARM ~~24.174.1121~~ 24.174.841, the three risk levels are low-risk, medium-risk, and high-risk.
- (48) "Same-day use" means that the administration of the preparation shall commence within 24 hours from the time of preparation.
- (49) "Satellite pharmacy" means a specialized inpatient pharmacy staffed by a pharmacist which is adjacent to or near the department served and is connected via computer to the central institutional pharmacy.
- (50) "Security" or "secure system" means a system to maintain the confidentiality and integrity of patient records, which are being sent electronically.
- (51) "Single-dose vial" means a sterile medication in a vial without preservatives.
- (52) "Sterile pharmaceutical" means any dosage form containing no viable microorganisms including, but not limited to, parenterals and ophthalmics.
- (53) "Supervising pharmacist" means the ~~registered~~ licensed pharmacist who is serving as the pharmacist on duty and is in charge of the day-to-day supervision of the pharmacy personnel.
- (54) "Supervision" means that all drug distribution or dispensing activities, immunizations, or other activities performed by pharmacy personnel are under the direction of a ~~registered~~ licensed pharmacist.
- (55) "Tech-Check-Tech (TCT)" means a program in a community or institutional pharmacy with an endorsement, in which a pharmacy technician or pharmacist intern performs the final check or product verification of medications prepared by another technician or pharmacist intern in compliance with TCT program requirements in ARM 24.174.715.
- ~~(55)~~(56) "Verification audit" means a comparison and verification of written patient orders with medications removed for that patient.

**Authorizing statute(s):** 37-7-201, 37-7-602, 50-32-314, MCA

**Implementing statute(s):** 37-7-101, 37-7-102, 37-7-201, 37-7-301, 37-7-306, 37-7-321, 37-7-406, 37-7-602, 37-7-603, 37-7-604, 37-7-605, 50-32-314, MCA

## Reasonable Necessity Statement

The board is amending definitions after the passage of HB 794, which amends the pharmacy practice act. The board is referring to statutory definitions where necessary, and updating language and outdated references in “immediate use” and “risk levels for sterile preparations.”

With the addition of a new device license type, the board is updating existing definitions using the term “device” to reduce confusion between the new license type, and the generally understood meaning of device outside the practice of pharmacy.

Due to the changes in technician usage reporting requirements in HB 794, the board is adding a definition of “Tech-Check-Tech” indicating a need for an endorsement and providing notice to the public as to the requirements for a pharmacy to use the “tech-check-tech” program. The board is further updating authorizing and implementation citations.

## 24.174.401 FEE SCHEDULE

- (1) Application for pharmacist licensure transfer - \$180.
- (2) Pharmacist initial license - \$70.
- (3) Pharmacist annual renewal fee - \$65.
- (4) Clinical pharmacist practitioner initial endorsement/~~registration~~ application and annual renewal fee - \$25.
- (5) Community and institutional pharmacy initial license (includes initial license, change in location, and change in ownership) - \$240.
- (6) Community and institutional pharmacy annual renewal fee - \$150.
- (7) Limited service pharmacy facility, (initial license and annual renewal) - \$45.
- (8) Intern ~~registration~~ license - \$50.
- (9) Montana NAPLEX examination processing fee (a separate exam fee is paid directly to NABP) - \$35.
- (10) Montana multistate pharmacy jurisprudence examination (MPJE) exam fee (a separate exam fee is paid directly to NABP) - \$25.
- ~~(11) Utilization plan initial endorsement and annual renewal fee~~ 75
- ~~(12)~~(11) Pharmacy technician ~~registration~~ license fee - \$35.
- ~~(13)~~(12) Pharmacy technician renewal fee - \$30.
- ~~(14)~~(13) Wholesale distributor initial license and annual renewal fee - \$240.

- ~~(15)~~(14) Out-of-state mail ~~service~~ order pharmacy initial license and annual renewal fee - \$240.
- ~~(16)~~(15) Certification of grades/transfer of internship hours - \$20.
- ~~(17)~~(16) Outpatient center for surgical services (initial or renewal) - \$45.
- ~~(18)~~(17) Drugs dispensed by a medical practitioner initial registration - \$240.
- ~~(19)~~(18) Drugs dispensed by a medical practitioner annual renewal fee - \$150.
- ~~(20)~~(19) Third-party logistics provider (3PL) initial license and annual renewal fee - \$240.
- ~~(21)~~(20) Repackager initial license and annual renewal fee - \$240.
- ~~(22)~~(21) Manufacturer initial license and annual renewal fee - \$240.
- ~~(23)~~(22) Veterinary retail facility initial license and annual renewal fee - \$150.
- ~~(24)~~(23) Additional standardized fees are specified in ARM 24.101.403.
- ~~(25)~~(24) The fees to be assessed for ~~registration~~ the endorsement to manufacture, distribute, dispense, conduct research on, or analyze a dangerous drugs (controlled substances) shall be assessed the following fees upon application and annual renewal:
- (a) manufacture - \$100.
  - (b) distribute - \$100.
  - (c) dispense – pharmacy - \$75.
  - (d) dispense – outpatient centers for surgical services - \$75.
- ~~(26)~~(25) The fees for ~~registration~~ the endorsement to manufacture, distribute, or supply medical gases shall be assessed according to the following annual fee:
- (a) medical gas distributor - \$75.
  - (b) medical gas supplier - \$75.
- (26) Device non-pharmacy facility initial license and annual renewal fee - \$240.

**Authorizing statute(s):** 37-1-134, 37-2-104, 37-7-201, 37-7-604, 37-7-610, 37-18-803, 50-32-314, MCA

**Implementing statute(s):** 37-1-134, 37-2-104, 37-7-201, 37-7-306, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 37-18-803, 50-32-314, MCA

## Reasonable Necessity Statement

The board is removing the fee for utilization plans for technicians after HB 794 repealed the requirement that utilization plans be filed with the board. The board is also updating the terminology relating to mail order pharmacies after HB 794 passed. Additionally, the board is adding a new license type for non-pharmacy facilities who sell devices, as the term is defined in HB 794.

The board anticipates a loss in revenue from the 309 utilization plans currently on file with the board. At \$75 per each renewal, revenue will decline roughly \$23,175 to the board, but licensees will save \$75 annually. For the new license type, the board anticipates 100 new applicants based on polling existing licensees, for a new revenue of \$24,000.

### 24.174.411 PHARMACIST MEAL/REST BREAKS

- (1) In any pharmacy staffed by a single pharmacist, the pharmacist shall take a meal/rest break on the premises for a period of up to 30 minutes per shift without closing the pharmacy and removing support personnel, provided the pharmacist reasonably believes that the security of prescription drugs will be maintained in the pharmacist's absence.
- (2) The pharmacist-in-charge shall develop written policies and procedures for operation of the pharmacy in the temporary absence of the pharmacist.
- ~~(2)(3)~~ A sign indicating that no pharmacists is on duty and the The time of the meal/rest break will be conspicuously posted in clear view of patients approaching the prescription area.
- (3) ~~In the pharmacist's absence a sign indicating that no pharmacist is on duty will be conspicuously displayed in clear view of patients approaching the prescription area.~~
- (4) ~~The pharmacist will remain on the premises if the prescription area is to remain open, and be available for emergencies.~~ New prescriptions may be accepted and processed by pharmacy technicians and interns in the pharmacist's absence. These prescriptions may not be dispensed until the pharmacist has performed prospective drug review and completed the final check.
- (5) ~~When authorized by the pharmacist, only registered technicians and interns directly involved in the process of filling prescriptions may remain in the prescription department to perform nondiscretionary duties as delineated by the pharmacist.~~ Telephoned new prescriptions may not be accepted in the pharmacist's absence unless identified in the pharmacy's policies and procedures.
- (6) ~~Upon returning, the pharmacist shall review any work performed in the pharmacist's absence.~~ At the discretion of the pharmacist, new prescriptions may

be dispensed, provided that the final check has been completed and the prescriptions are waiting to be dispensed, unless counseling is requested by the patient or required by the pharmacist.

- (7) ~~In the pharmacist's absence there may be no dispensing of new prescriptions that the pharmacist has checked and that are waiting to be picked up, nor may counseling be provided. At the discretion of the pharmacist, previously checked medication refills may be dispensed in the pharmacist's absence, provided the offer to counsel is made. If the patient requests counseling, the patient may wait for the pharmacist to return or may leave a telephone number for the pharmacist to call upon return.~~
- (8) ~~At the discretion of the pharmacist, previously checked medication refills may be handed to patients or their agents by registered technicians in the pharmacist's absence, and the technicians must offer the patient counseling by the pharmacist. If the patient desires counseling, the patient may wait for the pharmacist to return or may leave a telephone number for the pharmacist to call upon return.~~
- (9) ~~Telephoned new prescriptions must not be accepted by support personnel in the pharmacist's absence.~~
- (10) ~~New hardcopy prescriptions may be accepted and processed by registered technicians in the pharmacist's absence. These prescriptions may not be dispensed until the pharmacist has performed prospective drug review and completed the final check.~~
- (11) ~~If two or more pharmacists are on duty, the pharmacists shall stagger their breaks so that the prescription department is not left without a pharmacist on duty.~~
- (12) ~~The pharmacist in charge shall develop written policies and procedures for operation of the prescription department in the temporary absence of the pharmacist.~~

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-1-101, 37-7-201, MCA

### **Reasonable Necessity Statement**

The board is amending this rule to implement legislative changes in HB 794. HB 794 repealed the requirement of licensees to submit technician utilization plans to the board. As that requirement has gone away, the board is amending this rule to require pharmacies to update internal policies and procedures to describe allowable functions of technicians in the absence of a pharmacist during a meal break.

The board is also amending this rule to address common questions received by the board and inspectors to combine and standardize language for ease of reading.

#### **24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS, INTERNS, AND PHARMACY TECHNICIANS**

- (1) An immunization-certified pharmacist may prescribe and administer those immunizations listed in 37-7-105, MCA, without a collaborative practice agreement in place, as required by the statute.
- (2) An immunization-certified pharmacist must have a collaborative practice agreement with a practitioner authorized to prescribe drugs to administer immunizations not listed in 37-7-105, MCA, to persons seven years of age or older, as provided in the most recent guidelines by vaccine and age group published by the U.S. Centers for Disease Control and Prevention (CDC) and as determined within a collaborative practice agreement; or, in the case of a public health emergency, a directive from the State Medical Officer of the Montana Department of Public Health and Human Services.
- (3) An immunization-certified pharmacist, as defined in 37-7-101, MCA, shall:
  - (a) provide a copy of the immunization certificate and current basic cardiopulmonary resuscitation (CPR) certification to the board for initial endorsement on license; and
  - (b) maintain documentation of immunization endorsement and current CPR certification on file at the practice site.
- (4) In order to administer immunizations, with or without a collaborative practice agreement, an immunization-certified pharmacist must meet the requirements of 37-7-105, MCA, and:
  - (a) administer vaccinations in accordance with established protocol that includes site-specific emergency measures;
  - (b) have access to a current edition of the CDC reference "Epidemiology and Prevention of Vaccine-Preventable Diseases";
  - (c) maintain the following:
    - (i) written policies and procedures for the types of immunizations administered;
    - (ii) specific description of the procedures, methods, and decision criteria to follow for administering the immunization;



- (iii) a detailed description of the procedures and patient activities to follow in the course of administering immunizations;
  - (iv) training for staff procedures and record keeping requirements; and
  - (v) disposal of used or contaminated supplies; and
- (d) maintain the following information in the patient's medical records as required by 37-7-105, MCA, which shall be considered confidential information:
  - (i) the patient's name, address, allergies, and date of birth;
  - (ii) the product's name, dose, manufacturer, lot number, and expiration date;
  - (iii) the date of administration;
  - (iv) the site and route of administration; and
  - (v) the administering pharmacist's name or identifiable initials and the pharmacy's address.
- (5) An immunization-certified pharmacist may delegate the administration of immunizations to a pharmacy intern or a pharmacy technician under the direct supervision of the pharmacist upon meeting the immunization certification requirements listed in 37-7-105, MCA, and this rule. The board shall issue an immunization endorsement on the license of an intern or pharmacy technician upon receipt of qualifications being met.
- (6) ~~The board shall randomly select renewal notice forms of immunization-certified pharmacists and pharmacy technicians for audit and verification of the requirements listed in this rule.~~ Verification and compliance of requirements listed in this rule, including certification, recordkeeping, and collaborative practice agreements, must be available for inspection by the board.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-101, 37-7-105, 37-7-201, MCA

### **Reasonable Necessity Statement**

HB 794 clarifies the board's inspection authority. The board is moving the review and verification of certification and recordkeeping requirements from the department's audit unit

to the board's inspectors to take advantage of the inspectors' subject matter expertise, and to allow for discussion with inspectors and more immediate addressing of concerns.

#### **24.174.526 CLINICAL PHARMACIST PRACTITIONER QUALIFICATIONS AND REQUIREMENTS**

- (1) An applicant for a clinical pharmacist practitioner ~~registration~~ endorsement shall:
  - (a) submit an application on a form prescribed by the board for approval by the board and the Board of Medical Examiners (BME);
  - (b) pay a required ~~registration~~ endorsement fee and annual renewal fee;
  - (c) hold an active, unrestricted Montana pharmacist license;
  - (d) have completed the years of clinical practice experience that meet the requirements for Board of Pharmacy Specialties (BPS) certification or other equivalent national certification, and hold one of the following active certifications:
    - (i) BPS certification; or
    - (ii) nationally recognized certification equivalent to BPS certification standards in an area of practice as approved by the board and ~~the Board of Medical Examiners (BME)~~.
  - (e) submit a signed collaborative practice agreement with the application to the board that includes a description of the type of supervision the collaborating practitioner will exercise over the clinical pharmacist practitioner; and
  - (f) ~~following approval of the board, submit the application and collaborative practice agreement to the BME for approval; and appear before the board and/or BME if requested.~~
  - ~~(g) appear before the board and/or BME if requested.~~
- (2) Within ten days of discontinuing work under an approved collaborative drug therapy agreement, the pharmacist shall notify the board and the clinical pharmacist practitioner's ~~registration~~ endorsement shall be inactive, until such time as a new application is approved.
- (3) A clinical pharmacist practitioner shall complete an annual renewal of a pharmacist's license and pay the clinical pharmacist practitioner endorsement renewal fee.
- (4) The board shall audit clinical pharmacist practitioners for compliance with continued ~~registration~~ endorsement.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-201, 37-7-306, MCA

### **Reasonable Necessity Statement**

HB 794 amends the requirements for clinical pharmacist practitioners (CPP) and indicates that the CPP is an endorsement on the pharmacist's license. The board is therefore amending the rule to reflect technical changes in the bill. The board is further amending the rule to update language to standardize with statute, and for ease of understanding by licensees and the general public.

### **24.174.701 PHARMACY TECHNICIAN REGISTRATION LICENSE REQUIREMENTS**

- (1) To be ~~registered~~ licensed as a pharmacy technician in this state, the applicant shall:
  - ~~(a)~~ be of good moral character;
  - ~~(b)~~(a) submit an application on a form prescribed by the board;
  - ~~(c)~~(b) pay application fees as prescribed by the board; and
  - ~~(d)~~(c) submit a copy of proof of certification by the Pharmacy Technician Certification Board (PTCB), National Healthcareer Association (ExCPT), or other board-approved certifying entity.
    - (i) The board recognizes other Montana health care licensing boards as certifying entities for which licensees can assist the pharmacist(s) in administering vaccines, in compliance with state and federal requirements, under the supervision of a pharmacist, pursuant to the following restrictions:
      - (A) The health care licensee is in good standing with their licensing board and is authorized to administer vaccines under their own scope of practice. The health care licensee does not need a separate pharmacy technician license issued by the board.
      - (B) The pharmacist(s) is authorized to prescribe, dispense, and administer vaccines, pursuant to 37-7-105, MCA, and ARM 24.174.503, and in compliance with state and federal requirements.
    - (ii) The ~~technician utilization plan must~~ pharmacy must have policies and procedures to reflect use of health care licensees to assist pharmacists

in administration of vaccines as authorized in (i) and their license must be conspicuously displayed at the pharmacy.

- (2) An applicant for ~~registration~~ licensure as a pharmacy technician in this state ~~may apply for a temporary practice permit who is not yet certified, or does not meet the age or training requirements for certification~~ may be issued a certified pharmacy technician provisional license, as authorized by ~~37-1-305, MCA, [HB 414, Chapter 279]~~, valid for two years from the date the ~~permit~~ provisional license was issued or after the applicant is eligible for certification.
- (3) No pharmacist, intern, or health care licensee whose license has been denied, revoked, or is currently suspended, or restricted for disciplinary purposes shall be eligible to be ~~registered~~ licensed as a pharmacy technician.

**Authorizing statute(s):** 37-1-131, 37-7-201, MCA

**Implementing statute(s):** 37-1-305, 37-7-101, 37-7-201, MCA

### **Reasonable Necessity Statement**

HB 794 amended the definition of “pharmacy technician” to “means an individual who assists a pharmacist in the practice of pharmacy and performs tasks delegated to the technician by a pharmacist that do not require a pharmacist’s independent professional judgment.” HB 794 also repealed the requirement that a pharmacy submit a technician utilization plan or changes to the board. The proposed amendments to the rules in subchapter 7 incorporate delegation of duties and use of technicians into a facility’s policies and procedures as a replacement to the previous details and restrictions of technician utilization plans. Policies and procedures for how a technician will be utilized can be customized by a facility’s scope of practice and based on the education, competencies, and training of the pharmacy technician staff, pursuant to supervision by a pharmacist.

HB 414 standardized terminology relating to provisional licensure, and the board is updating the provisional licensure for technicians accordingly. The board is further amending the rule to reflect that there is no age restriction under Montana law to get a provisional license but the third party certifying bodies for technicians require an individual to be 18 to sit for the exam and to have completed qualifying training/education courses.

### **24.174.703 USE AND TRAINING OF PHARMACY TECHNICIANS**

- (1) A pharmacy technician, as defined in 37-7-101, MCA, may perform tasks as delegated by the supervising pharmacist and may not perform tasks which require the exercise of the pharmacist's independent professional judgment, including but not limited to, patient counseling, drug product selection, drug interaction review or drug regimen review.
- (2) An initial training program must include on-the-job practical training and didactic education that is commensurate with the tasks and functions a pharmacy technician may perform. Pharmacy technician training materials must be available for inspection by the board.
- ~~(2)~~(3) A pharmacy must have policies and procedures directing how a pharmacy technician will be utilized based on the technician's training, experience, education, skills, competencies, and applicable scope of practice. must work under the provisions of a technician utilization plan and the plan The policies and procedures must be made available for inspection by the board.
- ~~(3)~~(4) When a pharmacist is not in the prescription department pharmacy, there shall be no dispensing of new prescriptions that the pharmacist has checked and that are waiting to be picked up, nor shall counseling be provided by the pharmacy technician new prescriptions may be dispensed, provided that the final check has been completed and the prescriptions are waiting to be dispensed, unless counseling is requested by the patient or required by the pharmacist. Pharmacy technicians may not provide counseling.
- ~~(4)~~(5) No medication may be released dispensed to a patient without review by a registered pharmacist for the accuracy and appropriateness of the prescription drug order.
- (6) All compounded medications must be verified by the supervising pharmacist including but not limited to checking: the original order, additives, dosages, and clarity of IV solution, where appropriate.
- ~~(5)~~(7) All pharmacy technicians and auxiliary staff shall be made visually identifiable by name and job title utilizing letters of 16 point or larger on a name badge.
- (8) All pharmacy technicians must properly identify themselves as a pharmacy technician when they answer the telephone, accept verbal prescription orders for new or refill prescriptions from medical practitioners with prescriptive authority or their designated agents, and initiate refill requests to a prescriber. Delegated activities related to pharmacy technicians accepting verbal prescription orders or initiating refill requests must be outlined in the policies and procedures.
- ~~(6)~~(9) All pharmacy technician licenses must be conspicuously displayed at all times in the place of business.
- (10) Pursuant to ARM 24.174.411, regarding pharmacist meal/rest breaks, a pharmacy technician may act as agent in charge of the pharmacy to ensure its integrity when

a licensed pharmacist is not physically present but remains on the premises. The pharmacy technician may not perform any duties which require the exercise of the pharmacist's independent professional judgment. The technician may not be left in charge for more than 30 minutes.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-101, 37-7-201, 37-7-301, ~~37-7-307~~, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.701.

### **24.174.711 RATIO OF PHARMACY TECHNICIANS AND INTERNS TO SUPERVISING PHARMACISTS**

- (1) The ratio of pharmacy technicians to pharmacist(s) on duty is to be determined by the pharmacist-in-charge. A pharmacist intern does not count against the pharmacist to pharmacy technician ratio.
- (2) The pharmacist-in-charge will ensure that the number of pharmacy technicians on duty can be satisfactorily supervised by the pharmacist(s) on duty to ensure patient safety and a safe work environment, provided:
  - (a) in the professional judgment of the pharmacist on duty, the ratio and supervision of pharmacy technicians is adequate and manageable based on the technician's scope of practice, training, education, skill and experience, the policy and procedures of the pharmacy must allow for safe and accurate filling and labeling of prescriptions, and the ratio must be assessed with regard to the pharmacy's quality assurance program , pursuant to ARM 24.174.407;
  - (b) ~~a technician utilization plan, as described in ARM 24.174.712, must include the policy the pharmacy's policies and procedures and shall be reviewed annually. All affected supervising pharmacists and pharmacy technicians must be familiar with the contents and any changes made must be reported to the board; and the policies and procedures must be available for inspection by the board.~~
  - (c) ~~a copy of the policy and procedures must be available for inspection by the board.~~

- (3) ~~No pharmacy shall modify a board-approved technician utilization plan without the prior written approval of the board.~~

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-101, 37-7-201, ~~37-7-307, 37-7-308, 37-7-309~~, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.701.

### **24.174.715 TECHNICIAN TECH-CHECK-TECHNICIAN PROGRAM**

- (1) ~~To participate in a technician check technician (TCT) program an institutional pharmacy within a hospital must meet the following requirements:~~ To participate in a TCT program, a pharmacy must be licensed by the board as an institutional pharmacy or a community pharmacy and must submit an application for an endorsement on the pharmacy's license, renew the endorsement annually, and submit a description of the types of services that will be provided through the TCT program. There is no cost for the endorsement.
- (a) ~~the pharmacy must include TCT as a technician duty, submitted to the Board of Pharmacy by the pharmacist in charge as part of the technician utilization plan;~~
  - (b) ~~develop a site-specific training program tailored to the patient population and medication distribution system;~~
  - (c) ~~designate one pharmacist to be responsible for meeting the TCT program training and validation requirements;~~
  - (d) ~~staffing must be adequate to support a consistent utilization of the TCT program;~~
  - (e) ~~a pharmacist must review all orders against a medication profile containing pertinent clinical information about the patient (allergies, current medication, etc.);~~
  - (f) ~~the medication description on the batch fill list must contain the same description as the labeling on the unit dose package;~~

- (g) ~~the drug distribution system must be structured so that at least one additional check of dispensed medications is completed prior to administration;~~
  - (h) ~~develop policies and procedures which include a list of the types of work that a technician may check and the types of work that are excluded from being checked by a technician; and~~
  - (i) ~~utilize the TCT program as a tool to redirect pharmacists from distributive tasks to cognitive and patient centered activities.~~
- (2) ~~In order to participate in a TCT program a technician must:~~ No medications utilized in a TCT program, as defined in 37-7-101, MCA, may be administered or dispensed to a patient without the prescription drug order or chart order first being reviewed by a licensed pharmacist for clinical evaluation and drug utilization.
- (a) ~~be a registered pharmacy intern in good standing with the board with at least three months experience in unit dose filling; or~~
  - (b) ~~be a certified pharmacy technician in good standing with the board working full or part time with six months equivalent experience in unit dose filling; and~~
  - (c) ~~complete site specific training in the TCT program.~~
- (3) ~~A TCT training program must include:~~ Pursuant to the definition of “pharmacy technician” in 37-7-101, MCA, a pharmacist may delegate tasks to a certified pharmacy technician, a provisional pharmacy technician (not yet certified), or a pharmacist intern through a TCT program who may be used to perform tasks associated with the physical preparation and processing of prescription drug orders or chart orders. In delegating these activities, the supervising pharmacist shall ensure that authorized activities do not include tasks which require a pharmacist’s clinical evaluation or independent professional judgment.
- (a) ~~didactic lecture (or equivalent training with a self-learning packet);~~
  - (b) ~~practical sessions (one on one training) which consist of observation of a pharmacist checking a unit dose medication batch and/or cart;~~
  - (c) ~~initial validation (and revalidation if needed); and~~
  - (d) ~~regular quality assurance audits performed quarterly for the first year then every six months thereafter.~~
- (4) ~~Approval from the Board of Pharmacy or designee is required prior to program implementation.~~ The TCT program may include a second certified pharmacy technician or a pharmacist intern who verifies the work of the first pharmacy technician (certified or provisional) or pharmacist intern to:
- (a) perform final product verification, excluding compounded products;



- (b) utilize bar code or other technology to perform verification of each medication product stored in a unit dose cart or automated pharmacy system when such medication will be administered to the patient by a licensed health care professional; and
- (c) verify repackaging of medications from bulk to unit dose for administration or dispensing.
- (5) If at any time a technician loses their validation, that individual must not function as a TCT until they are retrained and revalidated. For any TCT program, a second verification of work cannot be performed by a provisional pharmacy technician.
- (6) All TCT program materials should be readily retrievable for review by the board inspector. The written policies and procedures must identify how technicians will be utilized in a TCT program, describe steps for safe and accurate filling and labeling of prescription drug orders and chart orders, and specifically describe the participating technician's training, education, competencies, and experiences related to the TCT program activities. In addition, the TCT program policies and procedures must:
  - (a) include and maintain a current record of a technician's training who participates in the TCT program;
  - (b) reflect current activities and be reviewed annually;
  - (c) be available for inspection by the board;
  - (d) include the review of all quality related events or errors with documentation of corrective action measures pursuant to the quality assurance program requirements in ARM 24.174.407; and
  - (e) identify specific monitoring, review, and quality assurance parameters instituted if high-risk or high-alert medications are used in the TCT program. Additional information is available on the Institute for Safe Medication Practices (ISMP) website at <https://home.ecri.org/pages/ismp>.
- (7) Any facility that is not within an institutional pharmacy within a hospital must come before the board.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-101, 37-7-201, 37-7-301, 37-7-307, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.301 and 24.174.701.

### **24.174.803 CHANGE IN LOCATION**

- (1) Whenever a facility licensed by the board changes its physical location, including within the existing business location, it shall submit a new schematic or floor plan, for board approval.
- (2) Whenever a facility changes its physical location outside of its then existing business location, its original license becomes void and must be surrendered. A new license application, including a new schematic and floor plan of the new location, shall be submitted for the board's approval at least 30 days before such change occurs.

**Authorizing statute(s):** 37-7-201, 37-7-610, 37-7-712, MCA

**Implementing statute(s):** 37-7-321, 37-7-604, 37-7-605, 37-7-610, 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

### **Reasonable Necessity Statement**

The board is consolidating all facility changes in location into ARM 24.174.803 and ownership changes into ARM 24.174.804. This amendment further updates outdated language for mail order pharmacies in ARM 24.174.1004 to refer to ARM 24.174.803 and 24.174.804, and repeals of ARM 24.174.1005. For wholesale drug distributors, ARM 24.174.1207 is amended to refer to ARM 24.174.803 and 24.174.804, and ARM 24.174.1208 is repealed.

The board is also updating authorizing and implementing citations to note the changes from HB 794.

### **24.174.804 CHANGE IN OWNERSHIP**

- (1) When a pharmacy, or other facility licensed by the board, changes ownership, a new license must be obtained by the new owner or owners. The owner shall submit a new license application at least 30 days prior to the change in ownership, or as soon as change in ownership information is available. The application must be reviewed by the board or its designee before the license may be issued. The original license will expire at the time of license renewal unless the board is notified of an alternative closure date.

- (2) A change in ownership for the purposes of this rule shall be deemed to occur when more than 50 percent of the equitable ownership of a business is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.
- (3) A change due to corporate restructuring or business structure for legal or tax purposes does not constitute an ownership change unless the provisions of (2) are met. The licensee shall notify the board of the change but a new application and license are not required.
- (4) The board must be notified in writing when five to 50 percent of the equitable ownership of a facility business license is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

**Authorizing statute(s):** 37-7-201, 37-7-610, MCA, 37-7-712, MCA

**Implementing statute(s):** 37-7-201, 37-7-321, 37-7-604, 37-7-605, 37-7-610, 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

#### **Reasonable Necessity Statement**

See the reason for ARM 24.174.803. The board is further amending this rule based on questions from licensees based on corporate ownership changes that are not public 30 days prior to such a change.

#### **24.174.823 CENTRALIZED FILLING AND REMOTE ORDER PROCESSING OF PRESCRIPTIONS IN COMMUNITY PHARMACIES**

- (1) Central or remote prescription processing services may be utilized by a licensed pharmacy if the following conditions have been met:
  - (a) remote licensed staff must be licensed in Montana as a pharmacist or a pharmacy technician or, if located out-of-state, be licensed in their home state and work under the authority of a pharmacy licensed in Montana pursuant to ~~(8)~~(6); and
  - (b) policies and procedures must be in place for remote licensed staff working off-site to process prescriptions or other applicable duties to ensure appropriate tasks, security, and privacy provisions are met. The policies and procedures shall:

- (i) be reviewed and documented annually;
  - (ii) include a continuous quality improvement program;
  - (iii) comply with federal and state statutes and regulations; and
  - (iv) be available for inspection by the board.
- (2) A pharmacy that outsources prescription filling or processing to another pharmacy shall, prior to outsourcing a prescription:
  - (a) notify the patient or the patient's agent that prescription filling or processing may be outsourced to another pharmacy and accommodate patient choice not to have the prescription outsourced;
  - (b) provide the name of the pharmacy that will be filling or processing the prescription or, if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may fill or process the prescription, the patient shall be notified of this fact; and
  - (c) clearly show the name, address, and telephone number of the delivering pharmacy on the prescription container.
- (3) Each pharmacy engaging in centralized prescription processing shall be jointly responsible for properly filling the prescription.
- (4) The delivering pharmacy is responsible for providing patient counseling. All central filling of prescriptions must be completed in a licensed pharmacy.
- (5) Pharmacies providing central processing or central filling services to pharmacies in the state of Montana must be licensed in Montana.
- (6) An out-of-state pharmacy providing central processing or central filling services to pharmacies in the state of Montana must be ~~registered~~ licensed as an out-of-state mail ~~service~~ order pharmacy and comply with all Montana statutes and rules.
- (7) Policies and procedures relating to centralized filling or processing activities shall be maintained at all pharmacies involved in centralized filling or processing and shall be available for inspection by the board. The policies and procedures shall:
  - (a) include the annual review of the competencies of pharmacists providing remote and/or centralized prescription processing or filling services;
  - (b) be reviewed and documented annually;
  - (c) include a continuous quality improvement program;
  - (d) comply with federal and state statutes and regulations; and
  - (e) be available for inspection by the board.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-201, 37-7-321, MCA

### **Reasonable Necessity Statement**

The board is amending this rule to correct a renumbering error missed in 2024. The board is further amending this rule to update terminology referring to mail order pharmacies after the passage of HB 794.

### **24.174.835 TRANSFER OF PRESCRIPTIONS**

- (1) The transfer of prescription information for the purpose of dispensing is permissible between pharmacies subject to DEA regulations and the following requirements:
  - (a) the transfer is communicated directly between two licensed pharmacists/interns, or is faxed or electronically transmitted by a pharmacy technician under the direct supervision of a pharmacist; A pharmacy technician may initiate the transfer if reflected in the pharmacy's policies and procedures; and
  - (b) a retrievable audit trail, including the date of transfer and initials or code of the transferring parties, is maintained for a period of two years; and
  - (c) the transfer of pertinent and necessary patient records to another licensed pharmacy, when requested by the patient or the patient's legally designated representative, is completed in a timeline that meets patient safety and health needs, subject to the pharmacist's professional judgment.
- (2) The transferring pharmacy shall:
  - (a) render the prescription void; and
  - (b) enter the name, address, and DEA number if required of the receiving pharmacy into the database of the transferring pharmacy.
- (3) The receiving pharmacy shall maintain documentation including:
  - (a) a notation that the prescription was received by transfer;
  - (b) the date on which the prescription was written;
  - (c) the original prescription number of the transferred prescription;
  - (d) the original number of refills, number of refills or quantity remaining, and the date of the most recent refill;

- (e) the name, address, and DEA number if required of the transferring pharmacy;
  - (f) all other prescription information required by state and federal laws and regulations; and
  - (g) a record of each prescription transferred.
- (4) Two or more pharmacies sharing common electronic files to maintain dispensing information are not required to transfer prescription information between these pharmacies, provided all common electronic files maintain complete and accurate records of each prescription and refill dispensed, and the total number of refills authorized is not exceeded.
- (a) Pharmacies sharing common electronic files shall have policies and procedures in place for handling patient exceptions.
- (5) In an emergency, a pharmacy may transfer original prescription information for a noncontrolled substance to a second pharmacy for the purpose of dispensing up to a seven-day supply, without voiding the original prescription.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-201, MCA

### **Reasonable Necessity Statement**

The board is amending this rule to reflect changes in HB 794, including that a pharmacy technician may initiate transfers if the policies and procedures allow for such duties.

### **24.174.1001 REGISTRATION LICENSURE OF OUT-OF-STATE MAIL SERVICE ORDER PHARMACIES**

- (1) No out-of-state pharmacy shall ship, mail, or deliver prescription drugs and/or devices to a patient in this state unless ~~registered~~ licensed in the home-state location and by the Montana Board of Pharmacy.
- (2) As conditions of licensure, the out-of-state mail order pharmacy must comply with the following:
  - (a) be a legal entity registered and in good standing with the Montana Secretary of State with a registered agent in Montana for service of process designated;

- (b) be registered and in good standing with the National Association of Boards of Pharmacy Digital Pharmacy Accreditation program, if applicable and if eligible based on offering at least one interactive pharmacy practice component;
- (c) maintain, in readily retrievable form, records of legend drugs and/or devices dispensed to Montana patients;
- (d) supply upon request, all information needed by the Montana Board of Pharmacy to carry out the board's responsibilities under the statutes and regulations pertaining to out-of-state mail order pharmacies, including information on the use of pharmacy technicians;
- (e) maintain pharmacy hours that permit the timely dispensing of drugs to Montana patients and provide reasonable access for the Montana patients to consult with a licensed pharmacist about such patients' medications; and
- (f) provide toll-free telephone communication consultation between a Montana patient and a pharmacist at the pharmacy who has access to the patient's records, and ensure that the telephone number(s) will be placed upon the label affixed to each drug or device container or in the educational materials included with the product. A toll-free telephone number shall also be provided to the board to allow for compliance with all information requests by the board.

**Authorizing statute(s):** 37-7-712, MCA

**Implementing statute(s):** 37-7-703, MCA

### **Reasonable Necessity Statement**

HB 794 amends the terminology of “out-of-state mail service pharmacy” to “out-of-state mail order pharmacy.” This is reflected throughout the mail order pharmacy rules, ARM 24.174.1001 through 24.174.1009. The board is further amending and consolidating mail order pharmacy rules for simplification and ease of reading, repealing an outdated reference to VIPPS, and adding new language to reference devices.

### **24.174.1003 IDENTIFICATION OF PHARMACIST-IN-CHARGE OF DISPENSING TO MONTANA**

- (1) Each out-of-state mail ~~service~~ order pharmacy that ships, mails, or delivers prescription drugs ~~and/or~~ devices and oversees the pharmacy services provided to patients in Montana shall identify a pharmacist-in-charge of dispensing

prescriptions for shipment to Montana and oversee the pharmacy services provided. Each pharmacist so identified shall meet the following requirements:

- (a) be licensed in good standing in the state in which the out-of-state mail ~~service~~ order pharmacy is located;
  - (b) be properly listed on the application form prescribed by the board;
  - (c) comply with all applicable Montana laws and rules; and
  - (d) notify the Montana board promptly in writing of any changes in the licensure status of the pharmacist-in-charge and any disciplinary actions initiated and/or finalized against the pharmacist's license.
- (2) When the pharmacist-in-charge of an out-of-state mail ~~service~~ order pharmacy ceases to be the pharmacist-in-charge, the pharmacist will be held responsible for notifying the board in writing of such termination of services.
- (3) Within ~~72 hours~~ ten days of termination of services of the pharmacist-in-charge, a new pharmacist-in-charge must be designated in writing on the appropriate board-approved form and filed with the board.

**Authorizing statute(s):** 37-7-201, 37-7-712, MCA

**Implementing statute(s):** 37-7-101, 37-7-201, 37-7-703, MCA

### **Reasonable Necessity Statement**

HB 794 amends the terminology of “out-of-state mail service pharmacy” to “out-of-state mail order pharmacy.” This is reflected throughout the mail order pharmacy rules, ARM 24.174.1001 through 24.174.1009. The board is further amending and consolidating mail order pharmacy rules for simplification and ease of reading, repealing an outdated reference to VIPPS, and adding new language to reference devices.

The board is amending this rule to allow pharmacies ten days to designate a new pharmacist-in-charge to align with amendments to ARM 24.174.805.

### **24.174.1004 CHANGE IN LOCATION AND CHANGE IN OWNERSHIP**

- (1) ~~Whenever a mail service pharmacy changes its physical location outside of its then existing business location, its original license becomes void and must be surrendered. The mail service pharmacy shall submit a new license application for~~



~~the new location at least 30 days before such change occurs.~~ For a facility change in location requirements, see ARM 24.174.803.

- (2) For a facility change in ownership requirements, see ARM 24.174.804.

**Authorizing statute(s):** 37-7-201, 37-7-712, MCA

**Implementing statute(s):** 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174 803.

### **24.174.1009 COMPLIANCE**

- (1) Each out-of-state mail ~~service~~ order pharmacy shall comply with the following:
- (a) all statutory and regulatory requirements of the state of Montana for controlled substances, including those that are different from federal law or regulation, unless compliance would violate the pharmacy drug laws or regulations of the state in which the pharmacy is located;
  - (b) all statutory and regulatory requirements of the state of Montana regarding drug product selection laws, unless compliance would violate the laws or regulations of the state in which the pharmacy is located;
  - (c) labeling of all prescriptions dispensed, to include but not be limited to identification of the product and quantity dispensed;
  - (d) all the statutory and regulatory requirements of the state of Montana for dispensing prescriptions in accordance with the quantities indicated by the prescriber, unless compliance would violate laws or regulations of the state in which the pharmacy is located.

**Authorizing statute(s):** 37-7-712, MCA

**Implementing statute(s):** 37-7-701, 37-7-703, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.1001.

#### **24.174.1201 WHOLESALE DISTRIBUTOR AND THIRD-PARTY LOGISTICS PROVIDER LICENSING**

- (1) Every person ~~engaged in wholesale distribution of drugs or prescription devices, which includes reverse wholesale distribution and medical gases, or engaged as a third-party logistics provider (3PL), as defined in 37-7-602, MCA, shall be licensed annually by the board~~ seeking licensure as a wholesale distributor or third-party logistics provide (3PL), as defined in 37-7-602, MCA, must be licensed annually by the board for the purposes of wholesale distribution, as defined in 37-7-602, MCA. The licensure requirement includes those engaged in wholesale distribution of drugs or prescription devices, reverse whole distribution, and medical gases. Each applicant shall:
  - (a) be a legal entity registered and in good standing with the Montana Secretary of State;
  - (b) file an application on a form prescribed by the board;
  - (c) pay the appropriate licensing and ~~registration~~ annual renewal fees;
  - (d) meet the requirements of 37-7-604, MCA; and
  - (e) designate a person-in-charge of the facility and for purposes of meeting requirements of 37-7-611, MCA, regarding a criminal background check at time of initial licensure or any change in person-in-charge, complete the requirements included on a form prescribed by the board.
    - (i) The person-in-charge must notify the board of any changes or termination of services.
    - (ii) Within 30 days of termination of services, a new person-in-charge must be designated in writing on the appropriate board-approved forms and filed with the board.
- (2) The board will independently verify the applicant's standing through the National Practitioner Data Bank (NPDB) and National Association of Boards of Pharmacy Clearinghouse.
- (3) The license shall be posted in a conspicuous place in the wholesaler's place of business for which it is issued.
- (4) No license may be issued to any applicant whose intended place of business is a personal residence.

- (5) Wholesale distributors located in Montana, applying for initial licensure, shall pass an inspection by a pharmacy inspector or other agent of the Board of Pharmacy before a license is issued.
- (6) A separate license is required for each separate location, in-state and/or out-of-state, where drugs or devices are stored and directly distributed to Montana.
- (7) ~~Wholesale distributors~~ Licensees shall operate in compliance with applicable federal, state, and local laws and regulations. ~~Wholesale distributors~~ Licensees who distribute controlled substances shall ~~register with~~ be licensed by the board, to obtain an appropriate dangerous drug endorsement, and register with the DEA.
- (8) Wholesale distributors shall submit proof of surety bond upon initial licensure and at time of renewal as identified on forms prescribed by the board in compliance with state and federal requirements.

**Authorizing statute(s):** 37-7-201, 37-7-610, MCA

**Implementing statute(s):** 37-7-603, 37-7-604, 37-7-605, 37-7-606, 37-7-611, 37-7-612, MCA

### **Reasonable Necessity Statement**

HB 794 amended the definition of “wholesale distribution” that includes the board’s four facility license types. The board is updating these rules to reflect the amended definition, and to align with the statutory term “license” rather than registration.

### **24.174.1202 MANUFACTURER AND REPACKAGER LICENSING**

- (1) Every person seeking licensure ~~or renewal~~ as a manufacturer or repackager, for the purposes of wholesale distribution, as defined in 37-7-602, MCA, shall:
  - (a) be a legal entity registered and in good standing with the Montana Secretary of State;
  - (b) file an application on a form prescribed by the board;
  - (c) pay the appropriate licensing and ~~registration~~ annual renewal fees;
  - (d) meet the requirements of 37-7-604, MCA; and
  - (e) designate a person-in-charge of the facility.

- (i) The person-in-charge must notify the board of any changes or termination of services.
  - (ii) Within 30 days of termination of services, a new person-in-charge must be designated in writing on the appropriate board-approved forms and filed with the board.
- (2) The board will independently verify the applicant's standing through the National Practitioner Data Bank (NPDB) and National Association of Boards of Pharmacy Clearinghouse.
- (3) The license shall be posted in a conspicuous place in the place of business for which it is issued.
- (4) No license may be issued to any applicant whose intended place of business is a personal residence.
- (5) Applicants located in Montana, applying for initial licensure, shall pass an inspection by a pharmacy inspector or other agent of the Board of Pharmacy before a license is issued.
- (6) A separate license is required for each separate location where drugs or devices are stored, repackaged, and/or directly distributed to Montana. For manufacturers, a license shall be issued to a facility meeting the requirements that is located in Montana.
- (7) Licensees shall operate in compliance with applicable federal, state, and local laws and regulations. Licensees who distribute controlled substances shall ~~register with~~ be licensed by the board, obtain an appropriate dangerous drug endorsement, register with the DEA, and shall comply with all applicable state, local, and DEA regulations.

**Authorizing statute(s):** 37-7-201, 37-7-610, MCA

**Implementing statute(s):** 37-7-201, 37-7-604, 37-7-605, 37-7-610, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.1201.

## 24.174.1204 MEDICAL GAS DISTRIBUTOR

- (1) Every person engaged in the manufacture or distribution of medical gases other than to the consuming public or a patient, in the state of Montana, shall ~~register annually with~~ be licensed by the board. Each applicant shall:
  - (a) ~~if a medical gas manufacturer, provide proof of registration with the Food and Drug Administration (FDA) as a medical gas manufacturer and, comply with all FDA requirements, and be licensed by the board as a manufacturer, pursuant to ARM 24.174.1203;~~
  - (b) ~~register if a medical gas distributor, be licensed by with~~ the board as a wholesale drug distributor;
  - (c) file an application ~~to register as a~~ for the medical gas distributor/manufacturer endorsement on a form prescribed by the board; and
  - (d) pay the appropriate ~~registration~~ endorsement application and annual renewal fees.
- (2) The ~~wholesale drug distributor~~ license with the medical gas distributor/manufacturer endorsement shall be posted in a conspicuous place in the ~~wholesaler's licensee's~~ place of business for which it is issued to the wholesaler, manufacturer, or both if in the same location.
- (3) A medical gas distributor or manufacturer shall establish and implement written procedures for maintaining records pertaining to medical gas production, processing, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law.
  - (a) Records shall be retained for at least two years after distribution or one year after the expiration date of the medical gas, whichever is longer.
  - (b) Records shall be readily available for review by the board, its inspector, or the FDA.

**Authorizing statute(s):** 37-1-134, 37-7-201, 37-7-610, MCA

**Implementing statute(s):** 37-7-604, 37-7-605, MCA

### Reasonable Necessity Statement

HB 794 clarified wholesale distribution authority specific to a manufacturer. Medical gas distributor/manufacturer endorsement is a single endorsement. The board is amending this

rule to distinguish the activity by the license type issued—wholesale drug distributor or manufacturer.

#### **24.174.1205 MEDICAL GAS SUPPLIER**

- (1) Every person engaged in ~~supplying~~ dispensing medical gases, ~~including associated medical gas supplies,~~ to the consuming public, or to a patient or a patient's agent, in the state of Montana that is not a licensed pharmacy shall ~~register annually with the board~~ obtain a medical gas supplier endorsement. Each applicant shall:
  - (a) ~~register~~ be licensed by ~~with~~ the board as a wholesale drug distributor;
  - (b) file an application to ~~register as a medical gas supplier~~ on a form prescribed by the board; and
  - (c) pay the appropriate ~~registration fee~~ endorsement application and annual renewal fees.
- (2) ~~The wholesale drug distributor license~~ A licensee with the a medical gas supplier endorsement shall ~~be posted~~ post the license in a conspicuous place in the ~~wholesaler's~~ place of business for which it is issued.
- (3) A medical gas supplier shall not:
  - (a) ~~supply~~ dispense prescription medications, except medical gases, without appropriate licensure as a pharmacy;
  - (b) manufacture or distribute medical gases without appropriate licensure and endorsement as a medical gas distributor; ~~or~~
  - (c) instruct patients regarding clinical use of equipment, or provide any monitoring, assessment, or other evaluation of therapeutic effects without appropriate licensure as a respiratory care practitioner; or
  - (d) dispense any device that requires a prescription for dispensing that is not a medical gas or medical gas supply, without licensure as a non-pharmacy device facility pursuant to [NEW RULE 1] and [NEW RULE 2].
- (4) A medical gas supplier shall ~~supply~~ dispense medical gas only pursuant to prescription order by an authorized prescriber.
- (5) A medical gas supplier must label each medical gas container with the name, address, and telephone number of the supplier.
- (6) A medical gas supplier shall establish and implement written procedures for maintaining records pertaining to the acquisition and ~~supply~~ dispensing of, and complaints related to, medical gases.

- (7) Records shall be retained for at least three years, as required by the FDA, after supply dispensing to a patient or one year after the expiration date of the medical gas, whichever is longer.
- (8) Records shall be readily available for ~~review~~ inspection by the board ~~or its inspector~~.

**Authorizing statute(s):** 37-1-134, 37-7-201, 37-7-610, MCA

**Implementing statute(s):** 37-7-604, 37-7-605, MCA

### **Reasonable Necessity Statement**

The board is amending this rule after passage of HB 794 related to NEW RULE 1 for devices and related clarifications to the endorsement rather than using the term “register.” The board is also taking the opportunity to simplify language and align rule language with statutory language.

### **24.174.1207 CHANGE IN LOCATION AND CHANGE IN OWNERSHIP**

- (1) ~~Whenever a facility licensed under this subchapter changes its physical location outside of its then existing business location, its original license becomes void and must be surrendered. The facility shall submit a new license application for the new location at least 30 days before such change occurs.~~ For change in facility location requirements, see ARM 24.174.803.
- (2) For change in facility ownership requirements, see ARM 24.174.804.

**Authorizing statute(s):** 37-7-201, 37-7-610, MCA

**Implementing statute(s):** 37-7-604, 37-7-605, 37-7-610, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.803.

#### **24.174.1801 QUALIFICATIONS FOR DISPENSER REGISTRATION**

- (1) An applicant for a registration to dispense drugs as a medical practitioner, pursuant to 37-2-104, MCA, shall:
  - (a) be a licensed medical practitioner as defined in 37-2-101~~(7)~~(8), MCA, or a naturopathic physician as defined in 37-2-101(9), MCA;
  - (b) be in good standing as that term is defined in this chapter;
  - (c) complete the application on a form supplied by the board;
  - (d) pay the required application fee and renewal fee; and
  - (e) be located in Montana.
- (2) The applicant shall:
  - (a) state each location in Montana at which prescription drugs will be dispensed; and
  - (b) grant permission to the board to inspect each location at which prescription drugs will be dispensed during the normal business hours.
- (3) Registrants must conspicuously display the dispenser license at all times in the place of business for which the license is issued.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-2-104, 37-7-201, MCA

#### **Reasonable Necessity Statement**

The board is amending this rule to include naturopathic physicians, who were added after the 2023 legislative session.

#### **24.174.1802 DISPENSING REQUIREMENTS**

- (1) A dispenser registrant shall:
  - (a) create a written or electronic prescription drug order for each drug dispensed and maintain such information in the patient's chart or record, pursuant to ARM 24.174.831, and 37-7-101(43) and 50-31-307, MCA, which shall include the following, but not be limited to:



- (i) patient's name;
  - (ii) name of drug;
  - (iii) strength;
  - (iv) dosage form;
  - (v) quantity;
  - (vi) directions for use;
  - (vii) date of issuance; and
  - (viii) prescriber's name;
- (b) perform in person the final verification check of each drug prior to dispensing that, at a minimum, includes the following:
- (i) ensuring the prescription drug product and label match the prescription drug order and the information on the manufacturer's label with respect to drug, dosage form, strength, quantity, and drug identification number;
  - (ii) verifying the prescription product label matches the prescription drug information with respect to prescription requirements in ARM 24.174.831;
  - (iii) verifying the drug has not expired and will not expire within the duration of use;
  - (iv) ensuring the registrant has completed a prospective drug utilization review after reviewing the patient profile; ~~and~~
  - (v) documenting that the final verification check was completed by the registrant; and
  - (vi) offer counseling to the patient;
- (c) ~~directly~~ prepare, dispense, and deliver the drug, including subsequent fills or refills, ~~in person~~ to their own patient(s) pursuant to the provisions in 37-2-104(2) and 50-31-307, MCA. In addition:
- (i) Health care staff members in the office, or place of practice of the registrant, may convey or dispense the drug on behalf of the registrant if:
    - (A) the drugs are prepared and sealed with two forms of identification written on the package by the registrant; and
    - (B) the health care staff member verifies the identity of the patient.

- (ii) The drug may not be dispensed, conveyed, or delivered by mail or common carrier.
- (2) A registrant shall comply with all federal and state statutes and regulations regarding dispensing of prescription drugs, including all requirements for the registrant to:
- (a) perform a prospective drug utilization review, pursuant to 37-7-101(17) and 37-7-406, MCA, and ARM ~~24.174.902~~ 24.174.901;
  - (b) provide patient labeling, pursuant to 37-7-101(14), MCA, and ARM 24.174.301(23), 24.174.832, and 24.174.833, including:
    - (i) the prescription label shall contain the name, address, and phone number of the registrant, name of patient, name and strength of drug, directions for use, and date of filling;
    - (ii) the prescription label must be securely attached to the outside of the container in which the drug is dispensed; and
    - (iii) the registrant shall provide Medication Guides and/or Patient Package Inserts, comply with Risk Evaluation and Mitigation Strategies, and/or other labeling requirements as required by the U.S. Food and Drug Administration;
  - (c) develop a protocol to manage, store, and secure prescription drug dispensing inventory, pursuant to ARM ~~24.174.301(43)~~, 24.174.814, ~~24.174.818~~, and 24.174.819, including:
    - (i) operating in a sanitary manner;
    - (ii) restricting access only to authorized individuals as determined by the registrant;
    - (iii) assuring that physical access to prescription drugs for dispensing is denied to all individuals at all times when a registrant is not on the premises, except with regard to dispensing pursuant to 37-2-104(8), MCA;
  - (d) maintain recordkeeping, pursuant to ARM 24.174.833, with records available for inspection by the board;
  - (e) compound drug products, including non-sterile and sterile products, pursuant to ARM 24.174.841;
  - (f) dispense with the offer to provide patient counseling, pursuant to 37-2-104(2), 37-7-101(31), and 37-7-406, MCA, and ARM 24.174.903; and

- ~~(g) provide notification that the patient may request dispensing of a less expensive therapeutically equivalent generic or interchangeable biologic product pursuant to 37-7-502 and 37-7-506, MCA, if applicable; and~~
- ~~(h)~~(g) implement and have in place a quality assurance program to detect, identify, and prevent prescription errors, pursuant to ARM 24.174.407.
- (3) With regard to inspections by the board or its designee, a registrant shall resolve conditions identified in an inspection report, if applicable.
- (4) Prescription drugs dispensed by a registrant may not be transferred to another practitioner or pharmacist for subsequent filling or refills.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-2-104, 37-7-201, MCA

#### **Reasonable Necessity Statement**

SB 456 allows staff members to provide the dispensed products to patients. The board is amending this rule to include the new language here for clarity and as part of the comprehensive rule. HB 794 removed the requirement for biologic notification to a patient and the requirement for notice to a purchaser for less expensive generic drugs, so the board is repealing that language in rule.

#### **24.174.1803 DISPENSER RECORDKEEPING REQUIREMENTS**

- (1) A registrant shall keep readily retrievable at each dispensing location records of dispensing and inventory, pursuant to ARM 24.174.833:
  - (a) a copy of the registrant's dispenser license;
  - (b) a record of each final verification check by the registrant;
  - (c) the registrant's protocols for handling drug recalls, including the arrangements for notifying patients;
  - (d) the registrant's protocols for disposal of drugs;
  - (e) with respect to a supplier from whom the registrant purchased prescription drugs:

- (i) the name, address, and phone number of each wholesale drug distributor supplier, as defined in 37-7-602(8), MCA, and ARM 24.174.1201; and
  - (ii) documentation including:
    - (A) for each wholesale ~~drug distributor~~ distribution supplier, the number and the expiration date of the license issued by the board; and
    - (B) for any pharmacy supplier acting as a wholesale drug distributor, the number and the expiration date of the pharmacy license issued by the board;
- (f) any other purchasing, inventory, and dispensing records required by state or federal statutes or regulations;
- (g) a manual or electronic dispensing record must be maintained separately from the patient medical record and kept for a minimum of two years. If an electronic health information system, as defined in 37-7-101(22), MCA, is utilized, the system must be able to produce a separate dispensing record; and
- (h) the dispensing record must show, at a minimum, the following for original and subsequent fills or refills, in compliance with ARM 24.174.833:
  - (i) name of patient;
  - (ii) unique identifier;
  - (iii) dose, dosage form, quantity dispensed, and either the brand name of drug or generic name and name of manufacturer;
  - (iv) directions for use;
  - (v) date of dispensing; and
  - (vi) initials of registrant dispensing the prescription.
- (2) In addition to meeting the requirements of ARM 24.174.1802, the registrant shall comply with any other state or federal law or regulation relating to dispensing of prescription drugs.
- (3) Records must be available for inspection by the board.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-2-104, 37-7-201, MCA

## **Reasonable Necessity Statement**

The board is amending this rule after the passage of HB 794, which updated the terminology to “wholesale distribution.”

## **ADOPT**

The rules proposed to be adopted are as follows:

### **NEW RULE 1 DEVICE, DURABLE MEDICAL EQUIPMENT, AND MEDICAL GAS SUPPLIER LICENSURE REQUIREMENTS FOR A NON-PHARMACY FACILITY**

- (1) A facility must obtain a device facility license from the board when the facility exclusively dispenses products that are devices, durable medical equipment (DME), medical gas, including medical gas supplies, directly to a patient in Montana pursuant to a prescription drug order, as defined in 37-7-101, MCA.
- (2) If the scope of practice is limited to (1), and does not include the dispensing of prescription drugs, then a device facility license type is sufficient and a separate pharmacy, out-of-state mail-order pharmacy, or wholesale distributor license is not required.
- (3) Facilities that comply with (1) and supply medical gas and/or medical gas supplies must apply for a medical gas supplier endorsement.
- (4) A device facility must identify a person-in-charge responsible for complying with board laws and regulations. The person-in-charge does not need to be a pharmacist. If a person-in-charge changes, the board must be notified of a new person-in-charge within 30 days.
- (5) A device facility must:
  - (a) submit an application and pay the required application, endorsement, and annual renewal fees as required by the board;
  - (b) submit with the application a description of the device facility’s scope of service, floor plan, security measures, list of device types or categories to be dispensed, list of policies and procedures in place necessary to comply with the provisions listed in [NEW RULE 2(3)], and product storage;
  - (c) apply for separate licenses to operate, maintain, open, or establish more than one device facility at separate locations;

- (d) provide a toll-free telephone number in the information dispensed to a patient to the location that has access to the patient's records. A toll-free telephone number shall also be provided to the board to allow for compliance with all information requests by the board;
  - (e) comply with board rules related to:
    - (i) location change, ARM 24.174.803;
    - (ii) ownership change, ARM 24.174.804;
    - (iii) license posting, ARM 24.174.806; and
    - (iv) closure, ARM 24.174.807;
  - (f) comply with all applicable state and federal laws and regulations.
- (6) No license may be issued to any device facility whose intended place of business is a personal residence.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-101, 37-7-102, 37-7-201, MCA

### **Reasonable Necessity Statement**

The board is proposing this rule after passage of HB 794, which allows for the licensure of non-pharmacy facilities for purposes of selling devices, durable medical equipment, and medical gas suppliers. Since HB 794 indicates these non-pharmacy facilities are separate licenses than pharmacies, the board is using its rulemaking authority in 37-7-201, MCA, to set up the qualifications for licensure.

The board received input from stakeholders and prospective licensees in developing the requirements for the new license type, including requiring submission of a floor plan, security requirements, policies and procedures, expected inventory, and customer service expectations. The board is further establishing requirements for a person in charge, and outlining when a device non-pharmacy license is sufficient or if a facility requires a mail order pharmacy license.

## **NEW RULE 2 DEVICE NON-PHARMACY FACILITY REQUIREMENTS**

- (1) In-state device facilities shall be inspected by the board and the board reserves the right to inspect out-of-state device facilities for cause.
- (2) Out-of-state device facilities must comply with the following:
  - (a) be a legal entity registered and in good standing with the Montana Secretary of State with a registered agent in Montana for services of process;
  - (b) maintain, in readily retrievable form, records of products dispensed to Montana patients pursuant to a prescription drug order;
  - (c) supply, upon request, all information needed by the board to carry out the board's responsibilities; and
  - (d) upon application, provide verification of licensure in the state in which the facility is located and provide the home-state inspection report.
- (3) A device facility must establish and implement policies and procedures for compliance with the following and be available upon inspection:
  - (a) maintaining records pertaining to the acquisition and supply of, and complaints related to, devices, DME, and/or medical gases;
  - (b) facility security;
  - (c) product storage and security;
  - (d) copy of prescription and records of dispensing pursuant to ARM 24.174.833;
  - (e) labeling of a dispensed product pursuant to ARM 24.174.832 that includes on the device, container, or in the educational information the name, address, and telephone number of the facility;
  - (f) providing directions and/or educational information to the patient regarding the dispensed product;
  - (g) procedures for ensuring patient safety for the appropriate patient care, treatment, and service response requirements for devices dispensed to a patient. The device facility must address how it will perform the following functions for a device provided to a patient:
    - (i) provide all supplies necessary to operate the equipment, and provide information on appropriate storage;
    - (ii) deliver, unpack, and assemble equipment and perform safety and operational checks for a device;
    - (iii) adapt, fit, or adjust medical equipment to meet patient need; and
    - (iv) maintain, inspect, and test medical equipment;

- (h) provide emergency maintenance, replacement, or backup of medical equipment when needed; and
- (i) for ventilators, life-sustaining infusions, or oxygen, the device facility must provide a backup system, means to provide a duplicate, or a power supply that provides a minimum of three times the licensee's response time to a patient.

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-101, 37-7-102, 37-7-201, MCA

### **Reasonable Necessity Statement**

The board is proposing this rule after passage of HB 794, which allows for the licensure of non-pharmacy facilities for purposes of selling devices, durable medical equipment, and medical gas supplies. Since HB 794 indicates these non-pharmacy facilities are separate licenses than pharmacies, the board is using its rulemaking authority in 37-7-201, MCA, to set up the requirements for facilities wishing to conduct business in Montana. The board received input from stakeholders and prospective licensees in developing the requirements for the facilities, including registration requirements, recordkeeping, and policy and procedure requirements. The board is also proposing inspection requirements and expectations of facilities.

### **NEW RULE 3 SUBSTANTIAL EQUIVALENCY**

- (1) The board adopts and incorporates by reference the 2025 substantial equivalency list for the Board of Pharmacy publication. The publication is available on the board's website.
- (2) The board intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA



**Implementing statute(s):** 37-1-304, MCA

### **Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.

While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. House Bill 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the board is proposing to adopt NEW RULE 3. The board has compared current licensure standards of the fifty United States for Board of Pharmacy licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards. The list will be published on the board's website. The board will analyze other states' licensing standards annually, and update the published list as needed.

### **REPEAL**

The rules proposed to be repealed are as follows:

### **24.174.704 PHARMACY TECHNICIAN TRAINING**

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-201, 37-7-307, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.701 and 24.174.703. Necessary provisions of this repealed rule are included in ARM 24.174.703.

#### **24.174.705 TASKS AND FUNCTIONS OF PHARMACY TECHNICIAN**

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-101, 37-7-201, 37-7-301, 37-7-307, MCA

#### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.701 and 24.174.703. Necessary provisions of this repealed rule are included in ARM 24.174.703.

#### **24.174.712 APPLICATION FOR APPROVAL OF UTILIZATION PLAN**

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-201, 37-7-308, 37-7-309, MCA

#### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.701.

#### **24.174.713 CONTENTS OF TRAINING COURSE**

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-201, 37-7-307, MCA

#### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.701.

#### **24.174.714 INSPECTION OF UTILIZATION PLAN AND TRAINING RECORD**

**Authorizing statute(s):** 37-7-201, MCA

**Implementing statute(s):** 37-7-201, 37-7-308, MCA

##### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.701.

#### **24.174.1002 CONDITIONS OF REGISTRATION**

**Authorizing statute(s):** 37-7-201, 37-7-712, MCA

**Implementing statute(s):** 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

##### **Reasonable Necessity Statement**

See the reason for ARM 24.174.1001. The board is repealing this rule after consolidating necessary provisions into ARM 24.174.1001.

#### **24.174.1005 CHANGE IN OWNERSHIP**

**Authorizing statute(s):** 37-7-201, 37-7-712, MCA

**Implementing statute(s):** 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

##### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.803.

#### **24.174.1008 USE OF PHARMACY TECHNICIANS BY OUT-OF-STATE MAIL SERVICE PHARMACIES**

**Authorizing statute(s):** 37-7-712, MCA

**Implementing statute(s):** 37-7-703, MCA

### **Reasonable Necessity Statement**

The board is repealing this rule after the passage of HB 794, which repeals the requirement for pharmacies to submit utilization plans to the board. The board has also repealed the ratio requirements for technicians, and this rule is therefore unnecessary. ARM 24.174.1001(2)(d) proposes to require the mail order pharmacy to maintain policies and procedures regarding the use of pharmacy technicians.

### **24.174.1208 CHANGE IN OWNERSHIP**

**Authorizing statute(s):** 37-7-201, 37-7-610, MCA

**Implementing statute(s):** 37-7-604, 37-7-605, 37-7-610, MCA

### **Reasonable Necessity Statement**

See the REASON for ARM 24.174.803.

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### **Small Business Impact**

The board anticipates a loss in revenue from the 309 utilization plans currently on file with the board. At \$75 per each renewal, revenue will decline roughly \$23,175 to the board, but licensees will save \$75 annually. For the new non-pharmacy facility license type, the board anticipates 100 new applicants based on polling existing licensees, for a new revenue of \$24,000. Although it is a new license type, existing licensees may opt to move from an existing type to the new type. As the fee for all facility license types is the same, existing licensees will not see a change in costs. New licensees can expect a change of \$240 annually.

The board has determined the class of people likely to be affected by these rules changes are people seeking to do business as device non-pharmacy facility sales. The board has set a licensing fee that is commensurate with its other facility costs and reflects the costs to the board in processing the application and issuing the license. The fee is direct, but is not significant.

The board's other proposed changes are necessary to implement legislation, and reflect amendments designed to make existing rules more clear to licensees and the general public, and to ensure public safety while reducing an administrative burden on licensees in submitting technician utilization plans to the board.

Documentation of the small business impact analysis is available upon request.

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### **Bill Sponsor Notification**

The primary bill sponsors were contacted by electronic mail for HB 414 on August 14, 2025, HB 794 on May 28, 2025, SB 456 on June 9, 2025, and HB 246 on August 19, 2025.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Jennifer Stallkamp

### **Approval**

Sarah Swanson, Commissioner

### **Approval**

Jeff Nikolaisen, Pharmacist, Presiding Officer, Board of Pharmacy



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF LABOR AND INDUSTRY

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-191.1

**Summary**

Implementing Senate Bill 319 pertaining to doula licensure and implementing House Bill 246 pertaining to substantial equivalency

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**Hearing Date and Time**

Wednesday, November 5, 2025, at 1:00 p.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/82022414742>

Meeting ID: 820 2241 4742; Password: 5101560500

Dial by Telephone: +1 646 558 8656

Meeting ID: 820 2241 4742; Password: 5101560500

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Wednesday, October 29, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

The 2025 Montana Legislature enacted Senate Bill (SB) 319, an act requiring licensure of doulas and establishing doula licensure requirements and scope of practice. The bill was signed by the Governor on May 12, 2025, and becomes effective on January 1, 2026. The department is adopting NEW RULES 1 through 7 to implement the legislation by proposing definitions, setting applicant qualifications, requirements for educational programs, licensure and renewal fees, supervision requirements, and establishing unprofessional conduct standards for doulas.

House Bill (HB) 246 (2025) requires the department to establish substantial equivalency standards for licensing programs. The department is adopting NEW RULE 4 to set the substantial equivalency standards and provide notice to doulas and the public of what jurisdictions are considered substantially equivalent.

More specific reasonable necessity statements follow each new proposed rule.

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## **Rulemaking Actions**

### **ADOPT**

The rules proposed to be adopted are as follows:

### **NEW RULE 1 DEFINITIONS**

- (1) “Emotional support” means offering reassurance, encouragement, and a calming presence to reduce stress and anxiety for the client, and includes support for developing perinatal plans.

- (2) “Informational support” means providing reliable, unbiased information about pregnancy, labor, birth, lactation, infant care, emotional and physical recovery from childbirth, and related postpartum issues that promote a client’s informed decision-making.
- (3) “Perinatal” means the period of time inclusive of antepartum, intrapartum, and postpartum as defined in [SB 319, Section 1 (2025)].
- (4) “Perinatal experience” means any doula-provided support, service, or visit that occurs during the perinatal period.
- (5) “Physical support” includes comfort techniques such as hands-on comfort measures, positioning, breathing exercises, and assistance with mobility, hydration, and basic comfort needs during pregnancy, labor, birth, and postpartum periods.

**Authorizing statute(s):** SB 319, section 4 (2025)

**Implementing statute(s):** SB 319, section 2 (2025)

### **Reasonable Necessity Statement**

The department is adopting definitions after the passage of SB 319. SB 319 included “physical,” “emotional,” and “informational” types of support, and the department is further defining what those terms mean within the practice of doulaing. The department is further defining “perinatal” for ease of describing the periods of time a doula may provide services to clients, and “perinatal experience” to indicate a limited license doula must be actively providing services, rather than just observing.

The department engaged with stakeholders and looked at scopes of practice from other jurisdictions in defining these terms.

### **NEW RULE 2 FEE SCHEDULE**

- (1) A doula must renew annually as set forth in ARM 24.101.413.
- (2) All fees are nonrefundable.
- (3) The standardized fees specified in ARM 24.101.403 apply, unless specified differently in (4).
- (4) The following fees will be charged:
  - (a) Application for initial license - \$180.



- (b) License renewal - \$175.

**Authorizing statute(s):** SB 319, section 4

**Implementing statute(s):** SB 319, section 2

### **Reasonable Necessity Statement**

The department is adopting this new rule to set licensure fees and further implement SB 319. The department is required to set fees related to the program area that provide the amount of money needed for the operation of the program's services per 37-1-134, MCA. The legislation requires the department to license and regulate doulas and the proposed fees will enable the department to meet this mandate. The department continuously monitors the budgets and spending of all licensure boards and programs, and will adjust this program's licensure fees through future rulemaking as needed. The department estimates that the proposed doula fees will affect approximately 200 applicants and renewing licensees for an annual revenue of \$36,000.

### **NEW RULE 3 LICENSE APPLICATION REQUIREMENTS**

- (1) An applicant for doula licensure must submit the following to the department as part of the application process:
  - (a) a completed application as provided by the department;
  - (b) current CPR certification;
  - (c) any fees required in [NEW RULE 2];
  - (d) verification from all states in which the applicant holds or has held a doula license or certificate; and
  - (e) verification of either:
    - (i) successful completion of 40 hours of supervised training with a licensed doula that includes at least two unique perinatal experiences; or
    - (ii) successful completion of at least 20 hours of doula training, provided by one or more entities approved by the department.
- (2) For applicants who practiced as a doula for at least two years prior to January 1, 2026, the applicant must submit:
  - (a) a completed application as provided by the department; and

- (b) a list of up to ten clients served within two years prior to January 1, 2026, identified by initials and including date range served. Doulas must have served a minimum of five clients to qualify under this part.
- (3) An applicant currently licensed to practice as a doula in another jurisdiction may be licensed by endorsement. An applicant shall submit proof of active licensure in good standing from another jurisdiction, if that jurisdiction has substantially equivalent standards to Montana.
- (4) An applicant seeking a limited license to complete supervised training must submit proof the applicant will be supervised in doula activities by a licensed doula who has been practicing for at least five years with no legal or disciplinary action taken against the doula.

**Authorizing statute(s):** SB 319, section 4

**Implementing statute(s):** SB 319, section 2

### **Reasonable Necessity Statement**

The department is proposing an application rule for doulas. The department is proposing its standard application process, and establishing the qualifications for new doulas, doulas who have been practicing prior to the passage of SB 319 requiring licensure, doulas licensed in other jurisdictions, and also the requirements for doulas with limited licenses requiring supervision. In developing these rules, the department consulted with stakeholders, as well as reviewed licensing requirements from other jurisdictions.

The department is proposing two paths to licensure for new doulas, a standard training period of 20 hours of education for each applicant, or 40 hours of on-the-job training, based on consultation with stakeholders and feedback from practicing doulas in Montana. For doulas who have been already practicing, the department will require an attestation by the doula of clients served. The department determined requiring doulas already in practice to receive more education and undergo supervision would be a barrier to licensure.

Doulas may also be licensed by endorsement if coming from a jurisdiction with substantially equivalent requirements to Montana.

### **NEW RULE 4 SUBSTANTIAL EQUIVALENCY**

- (1) The department adopts and incorporates by reference the 2025 substantial equivalency list for doula publication. The publication is available on the department's website.
- (2) The department intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

### **Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.

While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. House Bill 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the department is proposing to adopt NEW RULE 4. The department has compared current licensure standards of the fifty United States for doula licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the department's initial approved list of states having substantially equivalent licensing standards. The list will be published on the department website. The department will analyze other states' licensing standards annually, and update the published list as needed.

### **NEW RULE 5 SUPERVISION OF LIMITED LICENSE DOULAS**

- (1) A licensed doula may supervise up to five limited license doulas.

- (2) The supervising doula must be readily available when the limited license doula is providing services to a client.
- (3) A supervising doula must provide mentoring and reflective learning opportunities to limited license doulas.
- (4) The supervising doula and the limited license doulas must keep a record of time and activities spent supervising the limited-license doula which must be made available to the department upon request. These records must be retained for seven years after the supervision ends.

**Authorizing statute(s):** SB 319, section 4

**Implementing statute(s):** SB 319, section 2

### **Reasonable Necessity Statement**

The department is proposing this rule to set expectations for the supervision and training of limited license doulas. To protect public safety and ensure adequate supervision, the department proposes limiting each licensed doula to supervising no more than five limited license doulas, and require the supervisor to be readily available to the limited license doula using some method of synchronous communication. The department is not requiring a specific type of availability as limited license doulas and supervisors should choose whichever method of communication best suits the situation.

The department is outlining the expectations of supervisors as department staff regularly receives questions from other supervisory license types about what constitutes supervision. Here, the expectation is that the supervising doula will provide knowledge and mentoring, and engage the limited license doulas in the conscious, critical examination of services provided to gain deeper understanding, improve performance, and promote personal and professional growth of the limited license doula.

The department is also proposing recordkeeping requirements so it may audit or investigate in the case of a complaint.

### **NEW RULE 6 TRAINING PROGRAMS**

- (1) If applying under [NEW RULE 3(1)(e)(ii)], applicants must demonstrate at least 20 hours of training in any of the following areas:
  - (a) perinatal support and education;
  - (b) labor and birth education;

- (c) lactation and feeding support;
  - (d) anatomy;
  - (e) advocacy and communication;
  - (f) ethics;
  - (g) perinatal mental health;
  - (h) grief and loss support;
  - (i) trauma-informed care;
  - (j) cultural safety.
- (2) Applicants may take one training program or combine training programs to meet the 20-hour requirement.
  - (3) Applicants must submit certificates of completion for each program completed.

**Authorizing statute(s):** SB 319, section 2

**Implementing statute(s):** SB 319, section 2

### **Reasonable Necessity Statement**

The department is proposing ten topics in which doula applicants receiving education, rather than on-the-job supervision, must receive training. The department will approve providers and programs, so an applicant may choose which method of education works best. All applicants under this rule must demonstrate 20 hours of education, whether in one specific course or by taking several courses which cover the required areas.

In choosing the areas of instruction, the department worked with practicing doulas across Montana, as well as considered requirements from other states.

### **NEW RULE 7 UNPROFESSIONAL CONDUCT**

- (1) In addition to 37-1-410, MCA, the following is unprofessional conduct for doulas:
  - (a) abandoning a client without prior notice to the client;
  - (b) failing to support communication between the client and the client's health care team;
  - (c) failing to refer a client for clinical care when necessary;

- (d) failing to provide trauma-informed, culturally safe, or client-centered care;
- (e) failing to recognize a client's background, identity, or experience;
- (f) failing to connect clients to appropriate community-based resources for medical, educational, financial, or psychosocial supports; or
- (g) failing to maintain records of services provided.

**Authorizing statute(s):** SB 319, section 4

**Implementing statute(s):** SB 319, section 2

### **Reasonable Necessity Statement**

See the General Statement of Reasonable Necessity. The department is proposing these standards for unprofessional conduct after review and discussion with stakeholders about the scope of practice and expectations for practicing doulas.

The department is proposing recordkeeping requirements to ensure the availability of records in the event of a complaint against a doula. The department is not proposing exact requirements for records, but expects a minimum record of clients served, dates, and services provided.

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### **Small Business Impact**

The department identifies that doulas in private practice, birthing centers, and individual practitioners are the groups of small businesses most likely to be affected by these rules. As doulas were not required to pay licensing or renewal fees prior to the passage of SB 319, there is a new cost per license. The department expects between 100 and 200 doula applicants in the first year, and expects that number to continue to rise. The total cost for the first year will be between \$20,000 and \$40,000 to new licensees.

Although there is a new fee impact to individuals wishing to become licensed, there is not another less burdensome method of accomplishing implementation of the legislation. The department is required to collect fees to administer the program, and has set the fees at the level necessary to achieve that. Due to it being a new license type, the rulemaking costs and programming cost to administer the license are higher in the first year and the department is expecting those costs to fall after the initial startup of the license. The department will adjust fees accordingly.

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**Bill Sponsor Notification**

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted on May 15, 2025, by electronic mail.

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**Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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**Rule Reviewer**

Jennifer Stallkamp

**Approval**

Sarah Swanson, Commissioner



MONTANA  
ADMINISTRATIVE  
REGISTER



**BOARD OF BEHAVIORAL HEALTH  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-197.1**

**Summary**

Implementing House Bill (HB) 76 pertaining to licensure of certified family peer support specialists

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**Hearing Date and Time**

Thursday, October 30, 2025, at 9:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/87051803468>

Meeting ID: 870 5180 3468; Password: 3055660579

Dial by Telephone: +1 646 558 8656

Meeting ID: 870 5180 3468; Password: 3055660579

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.



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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 23, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

The 2025 Legislature passed HB 76, creating the licensing of certified family peer support specialists. The board is proposing to adopt NEW RULE 1, identifying the competencies necessary for a training course, and updating existing rules to include certified family peer support specialists. In reviewing HB 76 and existing rules governing the practice of peer support, the board is proposing to include certified family peer support specialists in existing rules including behavioral health peer support specialists as the administration and regulation of the practices are similar.

More specific reasonable necessity statements follow each rule.

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## **Rulemaking Actions**

### **AMEND**

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

### **24.219.301 DEFINITIONS**

- (1) "Behavioral health disorder" means a wide range of mental health conditions or disorders that affect mood, thinking, and behavior that impair the individual's ability to build or maintain satisfactory interpersonal relationships and to manage daily functioning.

- (2) "Candidate" means an individual as defined in 37-39-307, MCA.
- (3) "CBHPSS" means a certified behavioral health peer support specialist.
- (4) "CFPSS" means a certified family peer support specialist.
- ~~(4)~~(5) "Client" means a recipient of services performed by licensees in this chapter.
- ~~(5)~~(6) "Clinical setting" for purposes of LCPC experience requirements means any public and/or private agency whose primary functions are to provide services as defined in 37-39-102(11), MCA.
- ~~(6)~~(7) "Contact hour" means academic coursework, approved workshop training, or an approved home study course that is completed hour-for-hour.
- ~~(7)~~(8) "Co-occurring disorder" means the existence of any addiction-related disorder and any other physical and or mental health disorder.
- ~~(8)~~(9) "Direct client contact" means physical presence, telephonic presence, or interactive video link presence of the client, client family member, or client representative.
- ~~(9)~~(10) "Direct observation of service delivery" means participation in the service delivery, observation through a two-way mirror, observation of a video or audiotape of the service delivery, or observation through an interactive video link of the service delivery.
- ~~(10)~~(11) "Dual relationship" means a situation in which a licensee is in a professional role with a person and:
- (a) at the same time is in another role with the same person;
  - (b) at the same time is in a relationship with a person closely associated with or related to the person with whom the licensee has the professional relationship; or
  - (c) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.
- ~~(11)~~(12) "Exploit" means to manipulate or attempt to manipulate or use a professional relationship with a client, former client, student, employee, supervisor, supervisee, or research participant for:
- (a) the licensee's emotional, financial, romantic, sexual, or personal advantage; or
  - (b) the advancement of the licensee's personal, religious, political, or business interests.
- ~~(12)~~(13) "Face-to-face" means supervision of a candidate by the supervisor which is either:

- (a) in-person; or
  - (b) electronically. The transmission must:
    - (i) be two-way;
    - (ii) be interactive;
    - (iii) be real-time;
    - (iv) be simultaneous; and
    - (v) provide for both audio and visual interaction.
- ~~(13)~~(14) "Independent practice" means the practice of social work by an LCSW who assumes responsibility and accountability for the nature and quality of the services provided to the client in exchange for direct payment or third-party reimbursement.
- ~~(14)~~(15) "LAC" means licensed addiction counselor licensed under Title 37, chapter 39, MCA.
- ~~(15)~~(16) "LBSW" means licensed baccalaureate social worker licensed under Title 37, chapter 39, MCA.
- ~~(16)~~(17) "LCPC" means licensed clinical professional counselor licensed under Title 37, chapter 39, MCA.
- ~~(17)~~(18) "LCSW" means licensed clinical social worker licensed under Title 37, chapter 39, MCA.
- ~~(18)~~(19) "LMFT" means licensed marriage and family therapist licensed under Title 37, chapter 39, MCA.
- ~~(19)~~(20) "LMSW" means licensed master's social worker licensed under Title 37, chapter 39, MCA.
- ~~(20)~~(21) "Psychosocial methods" means those professional techniques which are identified as clinical in nature and:
- (a) enhance the problem solving and coping capacity of people;
  - (b) link people with systems that provide them with resources, services, and opportunities;
  - (c) promote effective and humane operation of these systems; and
  - (d) contribute to the development and improvement of social policy.
- ~~(21)~~(22) "Psychotherapy and counseling" means the therapeutic process of:
- (a) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or

- (b) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses that interfere with mental health.

~~(22)~~(23) "Recovery" from a behavioral health disorder in subchapter 9 of these rules means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential. Applicants must attest that recovery does not include any period of incarceration, or hospitalization or any inpatient admission related to a behavioral health disorder that exceeds 72 hours, within the two years immediately preceding application. Applicants with a diagnosed chemical dependency must be two years into sustained remission as defined in the Diagnostic and Statistical Manual of Mental Disorders, meaning the applicant has not had any symptoms except a strong desire or urge to drink alcohol.

~~(23)~~(24) "Sexual contact" includes but is not limited to electronic exploitation, sexual intercourse, either genital or anal, cunnilingus, fellatio, or the handling of the breasts, genital areas, buttocks, or thighs, whether clothed or unclothed either by the licensee or the client.

~~(24)~~(25) "Sexual harassment" includes deliberate or repeated comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient.

~~(25)~~(26) "Significant monetary value" means more than a de minimis value exceeding \$25.

~~(26)~~(27) "Supervised work experience" means the requirements where a candidate gains minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients and colleagues.

~~(27)~~(28) "Supervisor" means a person who meets the criteria set forth in ARM 24.219.421.

**Authorizing statute(s):** 37-1-131, 37-39-103, MCA

**Implementing statute(s):** 37-1-131, 37-39-202, 37-39-307, 37-39-308, 37-39-309, 37-39-310, 37-39-311, 37-39-312, MCA

## Reasonable Necessity Statement

The board is amending this rule after the passage of HB 76 (2025). The board is including a definition for “certified family peer support specialist” as the new license type for reference throughout the administrative rules.

### 24.219.401 FEE SCHEDULE

- (1) Application fee
  - (a) LCSW, LMSW, LBSW, LCPC, LMFT \$200.
  - (b) LAC \$250.
  - (c) CBHPSS, CFPSS \$125.
  - (d) LCSW, LMSW, LBSW, LCPC, LMFT candidates \$200.
  - (e) LAC candidate \$250.
- (2) Renewal fee for active status
  - (a) LCSW, LMSW, LBSW, LCPC, LMFT \$149.
  - (b) LAC \$128.
  - (c) CBHPSS, CFPSS \$93.
- (3) Renewal fee for inactive status
  - (a) LCSW, LMSW, LBSW, LCPC, LMFT \$75.
  - (b) LAC \$64.
  - (c) CBHPSS, CFPSS \$47.
- (4) Candidate annual registration fee (LCSW, LMSW, LBSW, LCPC, LMFT, and LAC candidates) \$85.
- (5) Additional standardized fees are specified in ARM 24.101.403.

**Authorizing statute(s):** 37-39-201, MCA, MCA

**Implementing statute(s):** 37-1-141, 37-39-201, MCA

## Reasonable Necessity Statement

The board is amending this rule after the passage of HB 76 (2025). The board is statutorily required to set fees related to its program area that provides the amount of money usually needed for the operation of the board for services per 37-1-134, MCA. The legislation requires the board to certify and regulate family peer support specialists and the proposed fees will enable the board to meet this mandate. The board is setting fees for each type of certificate contemplated by the legislation to cover the board's expenses for the initial certificate processing of an estimated 100 applicants. The annual renewal fee is proposed at \$93, which will be charged beginning in fiscal year 2027. It is estimated that the new fees will affect approximately 100 individuals and result in approximately \$12,500 of board revenue for fiscal year 2026 and an approximate average of \$10,000 in annual revenue thereafter.

## 24.219.421 SUPERVISOR QUALIFICATIONS

- (1) Licensure candidates, ~~and CBHPSS, and CFPSS~~ must be supervised per the requirements of this rule and ARM 24.219.504, 24.219.604, 24.219.704, and 24.219.5008.
- (2) Except as provided below, all supervisors must:
  - (a) have an active license in good standing in the jurisdiction in which the supervision is occurring; and
  - (b) meet one of the below criteria:
    - (i) have been licensed in their respective disciplines for at least three years, excluding any period of licensure as a candidate; or
    - (ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.
- (3) LCSW, LCPC, and LMFT candidates must be supervised by an LCSW, LCPC, LMFT, licensed psychologist, or licensed and board-certified psychiatrist.
- (4) LMSW candidate supervisors must be licensed as an LCSW or LMSW.
- (5) LBSW candidate supervisors must have an active license in good standing in the jurisdiction in which the supervision is occurring as an LCSW, LMSW, or LBSW. If the supervisor is an LBSW the supervisor must have been licensed for at least three years as an LBSW. An LBSW may not take supervision courses to qualify to supervise LBSW candidates.
- (6) LAC candidate supervisors must be:

- (a) licensed as an LAC and have an active license in good standing in the jurisdiction in which the supervision is occurring with a minimum of three years post-licensure experience in a qualified treatment setting as defined in ARM 24.219.5010; or
- (b) trained in a related field. If trained in a related field:
  - (i) the supervisor must have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision; and
  - (ii) the supervisor must have training equivalent to that described in ARM 24.219.5006(2)(b).
- (7) CBHPSS and CFPSS supervisors must have an active license in good standing in the jurisdiction in which the supervision is occurring as a mental health professional as defined by 37-39-102, MCA.
- (8) A supervisor shall not:
  - (a) be the candidate's, ~~or~~ CBHPSS's, or CFPSS's parent, child, spouse, or sibling; or
  - (b) have a conflict of interest such as, but limited to, being in a cohabitation or financially dependent relationship.

**Authorizing statute(s):** 37-1-131, 37-39-201, MCA

**Implementing statute(s):** 37-1-131, 37-39-202, 37-39-307, 37-39-308, 37-39-309, 37-39-310, 37-39-311, 37-39-312, MCA

### **Reasonable Necessity Statement**

The board is amending this rule to include family peer support specialists after the passage of HB 76 (2025.) After review of existing requirements for CBHPSS and input from stakeholders, the board determined the practice of family peer support specialists is similar enough to CBHPSS that it is appropriate to set the supervisor qualifications equivalent to the requirements for CBHPSS.

### **24.219.422 GENERAL SUPERVISION AND RECORDKEEPING REQUIREMENTS**

- (1) A supervisor must meet the requirements of ARM 24.219.421.

- (2) Candidates must maintain the following records for a minimum of seven years from the date of licensure or seven years from the expiration of their candidate license if they do not obtain a Montana license:
  - (a) names and license numbers of candidate and supervisor;
  - (b) date and length of supervision sessions in increments not less than 15 minutes with a description of the supervised work experience as required under ARM 24.219.504, 24.219.604, 24.219.704, or 24.219.5008;
  - (c) content summary of the supervision session (excluding confidential information);
  - (d) content demonstrating the candidate's developing competence under ARM 24.219.504, 24.219.604, 24.219.704, or 24.219.5008; and
  - (e) supervisor attestation within the record that the records are accurate.
- (3) CBHPSS and CFPSS must maintain the following records seven years from the date a supervisor ceased to supervise the CBHPSS and CFPSS:
  - (a) names and license numbers of ~~candidate~~ peer support specialist and supervisor;
  - (b) date and length of supervision sessions in increments of not less than 15 minutes with a description of supervision;
  - (c) content summary of the supervision session (excluding confidential information); and
  - (d) supervisor attestation within the record that the records are accurate.
- (4) Candidates, CBHPSS, CFPSS, and supervisors must comply with applicable client privacy laws.
- (5) Supervisors must:
  - (a) review and sign all reports and/or assessment interpretations and results sent to other public or private agencies that affect the current status of a client;
  - (b) preapprove on a continual and ongoing basis all therapeutic interventions or supportive interventions and the assessment results and interpretations used in the planning and/or implementation of those therapeutic interventions; and
  - (c) maintain records showing licensees have met the supervision requirements in this rule for a minimum of seven years after the date the supervisor ceased to supervise the candidate, ~~or CBHPSS, or CFPSS~~.
- (6) The supervisor may be subject to disciplinary action for failure to adequately supervise the candidate, ~~or CBHPSS, or CFPSS~~ under this board's statutes and rules.



- (7) The department may request records from candidates, ~~and CBHPSS, and CFPSS~~ at any time.
- (8) The department may annually randomly audit a board-determined percentage of candidates, ~~and CBHPSS, and CFPSS~~ who have renewed their licenses to evaluate:
  - (a) whether records are being maintained in compliance with this rule; and
  - (b) that the supervision requirements of this rule and ARM 24.219.504, 24.219.604, 24.219.704, or 24.219.5008 are being met.
- (9) A candidate, ~~or CBHPSS, or CFPSS~~ cannot practice without a supervisor as described in this chapter.
- (10) When there is a change in supervisor, the following individuals must notify the board no later than 20 business days following the change using forms provided by the department:
  - (a) the candidate, ~~or CBHPSS, or CFPSS~~;
  - (b) the new supervisor; and/or
  - (c) the individual ceasing to supervise a candidate.
- (11) The supervisor, candidate, ~~or CBHPSS, or CFPSS~~ may be subject to disciplinary action for failure to report a change in supervisor.
- (12) A candidate must provide an update to the department within 20 business days if there is a substantial change in the candidate's training and supervision plan. An updated training and supervision plan or a change in supervisor does not require additional approval unless there is reason to believe the update does not conform to the board's training and supervision requirements.
- (13) The candidate, ~~or CBHPSS, or CFPSS~~ and supervisors are responsible for ensuring compliance with the statutes, rules, and standards pertaining to the practice at all times.

**Authorizing statute(s):** 37-1-131, 37-39-201, MCA

**Implementing statute(s):** 37-1-131, 37-39-202, 37-39-307, 37-39-308, 37-39-309, 37-39-310, 37-39-311, 37-39-312, MCA

### **Reasonable Necessity Statement**

The board is amending this rule to include family peer support specialists after the passage of HB 76 (2025). After review of existing requirements for CBHPSS and input from stakeholders, the board determined the practice of family peer support specialists is similar enough to CBHPSS that it is appropriate to set the general requirements and record keeping requirements equivalent to the requirements for CBHPSS. The board determined it would be easier for supervisors to have one set of requirements when supervising peer support specialists.

### **24.219.430 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, ~~AND~~ CBHPSS, AND CFPSS**

- (1) Active status licensees may convert to inactive status on the renewal form or by informing the department. Inactive licensees must inform the department of any change of address while on inactive status and must pay the inactive renewal fee annually to avoid license expiration or termination.
- (2) Inactive licensees or certificate holders may not practice.
- (3) Inactive status licensees or certificate holders may convert to active status upon request and payment of the required fee.
- (4) In order to convert to active status, licensees and certificate holders:
  - (a) may not have been out of active practice for more than five years; and
  - (b) must have completed ten hours of continuing education (CE) per each year of inactive status. The CE must have been completed within the twenty-four months prior to converting to active status.

**Authorizing statute(s):** 37-1-131, 37-1-319, MCA

**Implementing statute(s):** 37-1-319, MCA

### **Reasonable Necessity Statement**

The board is amending this rule's catchphrase to include family peer support specialists after the passage of HB 76 (2025). All other licensees of the board are included in the active/inactive status rule, so with the creation of a new license type, the board is extending the same requirements to CFPSS.

#### **24.219.907 CBHPSS and CFPSS REQUIREMENTS**

- (1) CBHPSS and CFPSS must receive a minimum of one hour of face-to-face supervision and consultation for every 20 hours of work experience. No more than 40 hours of work experience may transpire without receiving the required hours of supervision and/or consultation. Less frequent supervision may take place only with prior approval of the board.

**Authorizing statute(s):** 37-1-131, 37-39-103, MCA

**Implementing statute(s):** 37-1-131, 37-39-312, MCA

#### **Reasonable Necessity Statement**

The board is amending this rule to include family peer support specialists after the passage of HB 76 (2025). After discussion and input from stakeholders, the board determined it is appropriate to set family peer support specialist requirements the same as CBHPSS for standardization purposes and to ensure proper supervision.

#### **24.219.2301 UNPROFESSIONAL CONDUCT AND CODE OF ETHICS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, CBHPSS, CFPSS, AND LCSW, LMSW, LBSW, LCPC, LMFT, AND LAC CANDIDATES**

- (1) In addition to the provisions of 37-1-316, MCA, the following are unprofessional conduct.
- (2) A licensee shall not:
  - (a) fail to respond to board inquiry or furnish information requested by the board, department investigators, or board representatives;
  - (b) commit any of the following boundary violations:
    - (i) provide services to a person with whom the licensee has had sexual contact at any time;
    - (ii) engage in or solicit sexual relations with a client or commit an act of sexual misconduct or a sexual offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;
    - (iii) engage in sexual contact with a former client, within two years following termination of professional services. After two years, the licensee who engages in such activity following termination of

professional services must demonstrate that there has been no exploitation, in light of all relevant factors, including:

- (A) the amount of time that has passed since professional services terminated;
  - (B) the nature and duration of the professional services;
  - (C) the circumstances of termination;
  - (D) the client's personal history;
  - (E) the client's current mental status;
  - (F) the likelihood of adverse impact on the client; and
  - (G) any statements or actions made by the licensee during the defined professional relationship suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client;
- (iv) solicit or engage in a sexual or intimate relationship with a client, a supervisee, client's family member, a client's household member, or other persons with whom a client has had a significant relationship;
  - (v) soliciting or engaging in sexual relations with the client of another licensee employed in the same program providing services;
  - (vi) condone or engage in sexual or other harassment;
  - (vii) engage in a dual relationship with a client or former client if the dual relationship has the potential to compromise the client's well-being, impair the licensee's objectivity and professional judgment, or creates or increases the risk of exploitation of the client. If a dual relationship arises as a result of unforeseeable and unavoidable circumstances, the licensee shall promptly take appropriate professional precautions. Appropriate professional precautions must ensure that the client's well-being is not compromised and that no exploitation occurs and should include consultation, supervision, documentation, or obtaining written informed consent of the client;
  - (viii) terminate a professional relationship for the purpose of beginning a personal or business relationship with a client;
  - (ix) participate in bartering, unless bartering is considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Licensees who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this

- arrangement will not be detrimental to the client or the professional relationship;
- (x) accept gifts or gratuities of significant monetary value or borrow money from a client or former client within two years after termination of services, except when this is a culturally accepted practice;
- (xi) interfere with or encourage termination of any legitimate personal relationship of a client, or interfere with a therapeutic relationship of another professional;
- (c) intentionally, recklessly, or carelessly cause physical or emotional harm to a client;
- (d) divide a fee or accept or give anything of value for receiving or making a referral;
- (e) exploit, as defined in ARM 24.219.301, in any manner professional relationships;
- (f) engage in conduct in the profession or occupation found to be a violation of the Montana Human Rights Act, Title 49, MCA;
- (g) falsify, misrepresent, or fail to maintain supervision records as required by ARM 24.219.422;
- (h) fail to appropriately supervise a licensure candidate, CBHPSS, CFPSS, or individual requiring supervision to perform a sexual offender evaluation under 37-1-139, MCA;
- (i) recommend a client seek or discontinue prescribed medication, or fail to provide a supportive environment for a client who is receiving prescribed medication;
- (j) engage in the practice when the licensee's license is inactive, has expired, is terminated, or has been suspended;
- (k) violate federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by Title 50, chapter 32, MCA;
- (l) be convicted of driving while under the influence of alcohol or drugs (DUI), or criminal possession of dangerous drugs at any time after issuance of a license, and within the two years preceding an application for licensure;
- (m) perform or supervise psychological assessments if not qualified to do so;
- (n) perform or supervise parenting plan evaluations without specialized training, education, and experience in the areas of assessment of children and adults, child and family development, child and family psychopathology, and the impact of divorce on families; or

- (o) practice independently as an LMSW or LBSW.
- (3) All licensees shall:
  - (a) provide clients with accurate and complete information regarding the extent and nature of the services available to them, including the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided;
  - (b) terminate services and professional relationships with clients when such services and relationships are no longer required or where a conflict of interest exists;
  - (c) make every effort to keep scheduled appointments;
  - (d) notify clients promptly and seek the transfer, referral, or continuation of services pursuant to the client's needs and preferences if termination or interruption of services is anticipated;
  - (e) attempt to make appropriate referrals pursuant to the client's needs;
  - (f) obtain informed written consent of the client or the client's legal guardian prior to the client's involvement in any research project of the licensee that might identify the client or place them at risk;
  - (g) obtain informed written consent of the client or the client's legal guardian prior to taping, recording, or permitting third-party observation of the client's activities that might identify the client or place them at risk;
  - (h) except where required by law or court order, safeguard information provided by clients, and make reasonable efforts to limit access to client information in an agency setting to those staff whose duties require access;
  - (i) disclose to and obtain written acknowledgement from the client or prospective client as to the fee to be charged for professional services, and/or the basis upon which the fee will be calculated;
  - (j) make and maintain records of services provided to a client. At a minimum, the records shall contain:
    - (i) documentation verifying the identity of the client;
    - (ii) documentation of the assessment and/or diagnosis;
    - (iii) documentation of each session;
    - (iv) documentation of a plan, documentation of any revision of the assessment or diagnosis or of a plan;
    - (v) documentation of discharge summary;

- (vi) any fees charged and other billing information; and
  - (vii) copies of all client authorization for release of information and any other legal forms pertaining to the client. These records shall be maintained by the licensee or agency employing the licensee under secure conditions and for time periods in compliance with applicable federal or state law, but in no case for fewer than seven years after the last date of service.
- (4) In addition to (2) and (3), CBHPSS are subject to the following standards.
- (a) CBHPSS shall:
    - (i) conduct themselves in a way that fosters their own recovery and take personal responsibility to seek support and manage their wellness;
    - (ii) as mandatory reporters, report abuse to appropriate authorities and supervisors;
    - (iii) disclose any pre-existing relationships, sexual or otherwise, to supervisor(s) prior to providing services to that individual; and
    - (iv) report risk of imminent harm to self or others to the proper authorities and to their supervisor. When reporting, the minimum amount of information necessary will be given to maintain confidentiality.
  - (b) CBHPSS shall not:
    - (i) engage or offer advice on the matters of diagnosis, treatment, or medications to the client; or
    - (ii) engage in or promote behaviors or activities that would jeopardize the CBHPSS's recovery or the recovery of those they serve.
- (5) In addition to (2) and (3), CFPSS are subject to the following standards.
- (a) CFPSS shall:
    - (i) conduct themselves in a way that fosters their own wellness and take personal responsibility to seek support and manage their wellness;
    - (ii) as mandatory reporters, report abuse to appropriate authorities and supervisors;
    - (iii) disclose any pre-existing relationships, sexual or otherwise, to supervisor(s) prior to providing services to that individual; and
    - (iv) report risk of imminent harm to self or others to the proper authorities and to their supervisor. When reporting, the minimum amount of information necessary will be given to maintain confidentiality.

- (b) CFPSS shall not:
  - (i) engage or offer advice on the matters of diagnosis, treatment, or medications to the client; or
  - (ii) engage in or promote behaviors or activities that would jeopardize the CFPSS's wellness or the wellness of those they serve.

**Authorizing statute(s):** 37-1-131, 37-1-136, 37-1-139, 37-1-319, 37-39-103, MCA

**Implementing statute(s):** 37-1-131, 37-1-136, 37-1-139, 37-1-316, 37-1-319, 37-39-103, MCA

### **Reasonable Necessity Statement**

The board is amending this rule to include family peer support specialists after the passage of HB 76 (2025). After review of existing requirements for CBHPSS and input from stakeholders, the board determined the practice of family peer support specialists is similar enough to CBHPSS that it is appropriate to set similar unprofessional conduct requirements for family peer support specialists.

### **ADOPT**

The rule proposed to be adopted is as follows:

#### **NEW RULE 1 CFPSS TRAINING COURSES**

- (1) Board-approved training courses must be at least 40 hours in duration and include an examination that must be passed. The course must provide content including but not limited to:
  - (a) navigating resources and systems of care within the state of Montana;
  - (b) professional responsibilities and standards;
  - (c) regulatory requirements including mandatory reporting, confidentiality, clinical supervision, and continuing education;
  - (d) documentation;
  - (e) self-care;
  - (f) sharing lived experiences;
  - (g) ethics and boundaries;
  - (h) situational awareness;



- (i) scope of practice;
- (j) communication skills, trauma-informed support, and facilitating support groups;
- (k) holistic family-centered support;
- (l) wellness and recovery practices including but not limited to holistic approach model;
- (m) individualized care;
- (n) one-on-one support;
- (o) strengths-based goal setting;
- (p) cultural humility and respect;
- (q) family-driven care;
- (r) empowerment;
- (r) advocacy;
- (s) addressing stigma and discrimination;
- (t) crisis intervention and safety planning; and
- (u) knowledge of suicide risk, prevention, and intervention.

**Authorizing statute(s):** 37-39-312, MCA

**Implementing statute(s):** 37-39-312, MCA

### **Reasonable Necessity Statement**

The board is proposing this new rule after the passage of HB 76 (2025) to identify areas of training necessary for family peer support specialists. The board engaged with local stakeholders and reviewed national standards in determining areas of training necessary to work as a family peer support specialist. After review and discussion with stakeholders and reviewing existing training materials, the board determined 40 hours is an appropriate amount of time necessary to cover the required material.

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### **Small Business Impact**

The proposed rules do not significantly and directly impact small businesses. The class or group of small businesses most likely to be affected are mental health centers, individual

practitioners, or small private practices should they wish to hire certified family peer support specialists.

Although family peer support specialists have not previously been licensed and there is an impact in requiring licensure, the board's proposed fees are identical to the fees currently charged to certified behavioral health peer support specialists, and are not significant. The application process is not lengthy, is standardized with the other license types administered by the board, and there is not a less rigorous method of regulation.

The board proposes a yearly fee for certification of \$125, and expects between 50 to 100 people to become certified. That would result in a yearly cumulative effect of no more than \$12,500.

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### **Bill Sponsor Notification**

The primary bill sponsor was contacted on May 20, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Jennifer Stallkamp

### **Approval**

Sarah Swanson, Commissioner

### **Approval**

Annette Beaudry, LCSW, Chair, Board of Behavioral Health



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF LABOR AND INDUSTRY

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-22.1

**Summary**

Rule changes due to 2023 and 2025 legislation pertaining to the Private Security Program

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**Hearing Date and Time**

Thursday, October 30, 2025, at 1:00 p.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/86885023717>

Meeting ID: 868 8502 3717; Password: 8782146367

Dial by Telephone: +1 646 558 8656

Meeting ID: 868 8502 3717; Password: 8782146367

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 23, 2025, at 5:00 p.m.

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## Contact

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 24.182.301 DEFINITIONS

- (1) "Employed" as used in 37-60-101, MCA, means a person who works for another for hire and includes an independent contractor under 39-71-417, MCA.
- ~~(1)~~(2) "POST" means the Montana Public Safety Officer Standards and Training Council.
- (3) "Private security firm" regarding the requirement for a firm license in 37-60-301, MCA, does not include a security guard who is a sole proprietor or other business entity with the owner/operator as the sole employee.
- ~~(2)~~(4) "Provisional permit" means the "probationary identification card" used in 37-60-202, MCA, and may also be referred to as a "training permit."
- ~~(3)~~(5) "Retail merchant" as used in 37-60-105, MCA, means a person who operates a store and sells goods to individuals solely for their own use.
- ~~(4)~~(6) "Weapon" as used in 37-60-405, MCA, means TASER devices, OC (pepper) sprays manufactured for security industry use, and collapsible batons, each of which security personnel receive training before using on duty. The term does not include firearms.

**Authorizing statute(s):** 37-60-202, MCA

**Implementing statute(s):** 37-60-101, 37-60-105, 37-60-202, 37-60-303, 37-60-405, MCA

### **Reasonable Necessity Statement**

The 2025 Montana Legislature passed Senate Bill (SB) 198, a bill generally revising occupational laws related to private security. The bill amended the definition of “private security guard” to no longer require employment specifically by private security firms, but still requiring private security guards to be employed. It is reasonably necessary to add a definition of “employed” to clarify that private security guards may be employed by licensed security firms, other employers, or themselves as independent contractors or sole practitioners under Montana law. The bill became effective July 1, 2025.

### **24.182.401 FEE SCHEDULE**

- (1) License application fees are as follows:
  - (a) ~~Private security firm or electronic security firm~~ All license types - \$250 80
  - (b) ~~Security guard or security alarm installer~~ 100
  - (c) ~~Private investigator~~ 250
  - (d) ~~Private investigator trainee~~ 150
  - (e) ~~Process server~~ 100
  - (f) ~~Private security firearms instructor~~ 150
  - (g)(b) Armed endorsement for security guard and private investigator - \$50
- (2) License renewal fees are as follows:
  - (a) ~~Private security firm or electronic security firm 200~~ All license types - \$80
  - (b) ~~Security guard or security alarm installer~~ 100
  - (c) ~~Private investigator~~ 175
  - (d) ~~Private investigator trainee~~ 100
  - (e) ~~Registered process server~~ 100
  - (f) ~~Private security firearms instructor~~ 125
  - (g)(b) Armed endorsement for security guard and private investigator - \$50
- (3) Examination fees are as follows:
  - (a) ~~Registered process server~~ 25

(b) Private investigator 20

**Authorizing statute(s):** 37-1-134, 37-60-202, MCA

**Implementing statute(s):** 25-1-1104, 37-1-134, 37-1-141, 37-60-202, 37-60-304, MCA

### **Reasonable Necessity Statement**

It is reasonably necessary to make the proposed fee changes to comply with the provisions of 37-1-134, MCA, and keep the program's fees commensurate with program costs. The department has determined that unless the fees are reduced as proposed, the program will have an overage of operating funds in violation of 37-1-134, MCA, by the end of Fiscal Year 2026. The department is combining the examination fees with the relevant application fees as this is the standard practice in the department.

### **24.182.403 PHOTO IDENTIFICATION CARD**

- (1) ~~Effective July 1, 2024, each private security firm and electronic security firm must, for each security guard or alarm installer they employ~~ All licensed security guards, alarm installers, private investigators, and trainees under a private investigator's supervision must:
  - (a) ~~provide~~ wear a laminated photograph identification card ~~using~~ that complies with the design specifications in (2)(3);
  - (b) ~~update the card~~ photograph ~~when the photograph does not~~ needed to clearly and accurately represent the licensee's current appearance ~~of the individual;~~ and
  - (c) ~~require the individual to~~ wear or carry the card while performing services and show it upon request; ~~and,~~
  - (d) ~~collect the card when the employment relationship ends.~~
- (2) Private and electronic security firms must:
  - (a) provide identification cards for the security guards and alarm installers they employ;
  - (b) ensure the cards are worn or carried by the licensees while performing services and shown upon request; and
  - (c) collect the card when the employment relationship ends.

- ~~(2)~~(3) Each card must be the size of a standard credit card laminated or made with durable materials and contain the following on the front of the card:
- (a) a clear, recent photograph of the individual displayed prominently on the card;
  - (b) the first and last name of the individual;
  - (c) the individual's license type;
  - (d) the name of the firm;
  - (e) the supervising private investigator if applicable;
  - (f) the individual's license number preceded by the words "the Department of Labor and Industry License Number";
  - (g) the card issuance date; and
  - (h) the QR code from the department-issued license.
- (3) ~~Each private investigator and any trainee under the private investigator's supervision must carry a photographic identification card described in (2).~~

**Authorizing statute(s):** 37-60-202, MCA

**Implementing statute(s):** ~~37-60-101~~, 37-60-407, MCA

### **Reasonable Necessity Statement**

It is reasonably necessary to amend this rule to remove a past effective date and align with SB 198 which no longer requires security guards to be employed by licensed private security firms. The amendments differentiate identification cards duties of private security firms who employ guards from guards not employed by private security firms.

### **24.182.405 INSURANCE AND SURETY BOND REQUIREMENTS**

- (1) The following licenses must carry insurance in the following amounts and types:
  - (a) Private investigators - a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury.
  - (b) Electronic security companies - a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury and errors and omissions coverage.

- (c) Private security firms - a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury.
  - (d) Private security firearms instructors - a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury and errors and omissions coverage.
  - (e) Private security guards - a minimum of \$500,000 occurrence form of commercial general liability which includes personal injury, if not employed by a private security firm that provides the insurance per (1)(c).
- (2) Process servers must maintain a surety bond in the amount of \$10,000 for an individual or \$100,000 for a firm. A levying officer may not levy on a judgment that exceeds the value of the bond.
- (3) The following licensees must carry firearms liability insurance coverage:
- (a) armed private investigators;
  - (b) private security firearms instructors; ~~and~~
  - (c) armed private security guards not employed by private security firms; and
  - ~~(e)~~(d) private security firms who employ armed private security guards.
- (4) An insurance carrier providing insurance under this rule must be:
- (a) licensed in the state in which the insurance was purchased and covered by that state's insolvency fund; or
  - (b) licensed in the state of Montana.
- (5) Licensees subject to this rule must:
- (a) immediately inform the department of the cancellation or lapse of required insurance coverage or surety bond; and
  - (b) direct and authorize the insurance carrier to inform the department of cancellation or lapse of the licensee's required coverage or surety bond.
- (6) Licensees must maintain the insurance coverage or surety bond required by this rule at all times of active licensure status.

**Authorizing statute(s):** 37-60-202, MCA

**Implementing statute(s):** 25-1-1111, 37-60-202, MCA



## Reasonable Necessity Statement

The 2025 Montana Legislature passed SB 198, a bill generally revising occupational laws related to private security. The bill amended the definition of "private security guard" to no longer require employment specifically by private security firms. It is reasonably necessary to amend this rule to specify the insurance required for security guards who are not employed by private security firms. Insurance is required per 37-60-202(3), MCA, for all program licensees except process servers. The bill became effective July 1, 2025.

### 24.182.407 PRIVATE SECURITY GUARD UNIFORM AND PROPERTY BRANDING

- (1) ~~Effective July 1, 2024, a private security firm must provide and require a~~ All private security guard to guards must wear a uniform that complies with this rule while on duty.
- (2) Private security firms must provide uniforms to all employed guards.
- ~~(2)~~(3) Security guard uniforms must:
  - (a) clearly display in block letters in a color and reflective material that contrasts with the fabric color, the words "security," "security officer," or "security guard" across the front of any cap and across the back of any shirt, vest, or overcoat to be visible at night, in low light, and at a reasonable distance; and
  - (b) clearly display the employer's company name in full and the words "security guard" above the left chest pocket area on the front of any shirt, vest, or overcoat on a patch no less than one inch by three inches.
- ~~(3)~~(4) Security vehicles must have "security" clearly displayed on each side of the vehicle.
- ~~(4)~~(5) Uniforms, vehicles, and equipment must not display any accessory, emblem, insignia, patch, seal, or term that is like any used by any foreign, tribal, federal, state, or local law enforcement agency.

**Authorizing statute(s):** 37-60-407, MCA

**Implementing statute(s):** 37-60-407, MCA

## Reasonable Necessity Statement

It is reasonably necessary to amend this rule to remove a past effective date and align with SB 198 which no longer requires security guards to be employed by licensed private security firms. The amendments differentiate uniform and property branding duties of private security firms who employ guards from guards not employed by private security firms.

#### **24.182.507 PROVISIONAL PERMIT – PRIVATE INVESTIGATOR TRAINEES**

- (1) An applicant for a private investigator license who does not meet the experience or examination requirements may apply for a provisional permit and work as a trainee under ARM ~~24.182.511~~ 24.182.512 and 24.182.804.
- (2) A provisional permit under this rule is subject to annual renewal and is valid until the applicant is issued a license, or until the applicant:
  - (a) fails the first examination for which the applicant is eligible after the department issues the permit; or
  - (b) exceeds the time limit to complete the work experience.

**Authorizing statute(s):** 37-60-202, MCA

**Implementing statute(s):** 37-60-202, MCA

#### **Reasonable Necessity Statement**

It is reasonably necessary to correct an erroneous cross-reference in this rule. In a 2023 rulemaking, ARM 24.182.511 was repealed and its contents relocated to ARM 24.182.512 and 24.182.804.

#### **24.182.514 PRIVATE SECURITY GUARD**

- (1) In addition to the requirements of 37-60-303, MCA, each security guard applicant must have verification of:
  - (a) successful completion of the training program required by ARM 24.182.807; and
  - (b) employment by a private security firm or other employer per ARM 24.182.301.
- (2) The verifications in (1) are not required to be submitted until after the fingerprint background check is successfully completed but are required as a final condition for the department to issue a license.

**Authorizing statute(s):** 2-4-201, 37-60-202, 37-60-303, MCA

**Implementing statute(s):** 37-60-101, 37-60-202, 37-60-303, 37-60-304, MCA

### **Reasonable Necessity Statement**

The department is amending this rule to align with provisions in SB 198 that allow private security guards to be employed by private security firms or other employers as designated in ARM 24.182.301.

### **24.182.807 PRIVATE SECURITY GUARD TRAINING PROGRAM**

- (1) ~~Each private security firm that employs or intends to employ an individual as a private security guard must certify, as~~ As a condition for the department to issue the issuance of a private security guard license, that the individual has applicants ~~must successfully completed~~ complete a minimum of 16 hours of training as follows and before practicing as a security guard:
  - (a) role and function of the security guard;
  - (b) federal, state, and local statutes and rules applicable to the practice of private security guards;
  - (c) interaction and cooperation with law enforcement;
  - (d) limitations on the use of force and self-defense and the use-of-force continuum;
  - (e) emergency procedures and hazardous material preparedness;
  - (f) communication skills, report writing, and radio communication;
  - (g) crisis intervention and crowd control;
  - (h) patrol techniques; and
  - (i) ethical and legal issues, including, but not limited to:
    - (i) confidentiality and right of privacy;
    - (ii) searches of persons and property;
    - (iii) limitations on the power to arrest and detain suspects;
    - (iv) treatment of juveniles, persons with physical or mental disabilities, and other special classes (e.g., racial, religious, or cultural);
    - (v) preservation of crime scene and handling of evidence;

- (vi) weapons or equipment other than firearms to be carried; and
- (vii) preventing abuse of authority.

(2) Completion of the required training must be certified by:

- (a) private security firms employing or intending to employ private security guards; or
- (b) individual private security guards when the employer is not a private security firm.

~~(2)(3)~~ Training on policies, systems, and procedures internal to the employer may not be included within the total hours of training required by this rule.

**Authorizing statute(s):** 37-60-202, 37-60-303, MCA

**Implementing statute(s):** 37-60-202, 37-60-303, MCA

#### **Reasonable Necessity Statement**

The department is amending this rule to align with provisions in SB 198 that allow private security guards to be employed by private security firms or other employers as designated in ARM 24.182.301.

#### **24.182.2301 UNPROFESSIONAL CONDUCT**

In addition to ~~37-1-316~~ 37-1-410, MCA and provisions in Title 37, chapter 60, MCA and these rules, the following is unprofessional conduct:

- (1) Becoming involved in investigations on behalf of a client with intent to break the law or to use the information unlawfully;
- (2) ~~Committing any act of sexual abuse, sexual misconduct, or sexual exploitation regardless of whether the act is related to the licensee's practice;~~
- (3) ~~Violating the Montana Human Rights Act, Title 49, MCA, as determined by the Montana Human Rights Commission;~~
- (4) ~~Performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure;~~
- (5)(2) Using the professional position of trust for illegal gains;
- (6)(3) Accepting investigations which conflict with previous or current investigations if the investigations are substantially related;

- ~~{7}~~(4) Failing to provide a client with an accurate and factual report within a time frame specified by mutual agreement;
- ~~{8}~~(5) Expressly or impliedly representing oneself as a member of law enforcement by conduct, dress, advertisement or other representation;
- ~~{9}~~ Filing a complaint with, or providing information to the department, which the licensee reasonably knows or ought to know is false or misleading;
- ~~{10}~~ Violating any local, state, federal, provincial, or tribal law or rule governing or affecting the practice of any licensee;
- ~~{11}~~(6) Accepting an assignment from a client that is directly adverse to a present client or former client or if there is a significant risk that the assignment will materially limit the licensee's responsibilities to a present or former client;
- ~~{12}~~(7) Failing to supervise, manage, train, or control auxiliary staff or other persons, including licensees, practicing under the licensee's supervision or control;
- ~~{13}~~(8) Discontinuing professional services unless:
  - (a) services have been completed,
  - (b) the client requests the discontinuation,
  - (c) alternative or replacement services are arranged, or
  - (d) the client is given reasonable opportunity to arrange alternative or replacement services;
- ~~{14}~~ Failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;
- ~~{15}~~(9) Failing to account for funds received in connection with any services rendered or to be rendered;
- ~~{16}~~(10) Failing to put in trust or otherwise properly segregate funds in connection with a specific project for a specific purpose; and
- ~~{17}~~(11) Failing to show proof of licensure upon request of any member of the public or law enforcement agency; and
- ~~{18}~~ Failing to respond to or cooperate with a department request or inquiry.

**Authorizing statute(s):** 37-60-202, MCA

**Implementing statute(s):** ~~37-1-316~~, 37-1-410, 37-60-202, 37-60-401, MCA

## **Reasonable Necessity Statement**

It is reasonably necessary to correct an erroneous citation in this rule's text and its implemented statutes. In 2023, SB 454 ended the Board of Private Security and shifted its regulatory authority to a licensing program within the Department of Labor and Industry (department). The department amended most of the relevant administrative rules in 2023, but missed correcting the citations to 37-1-410, MCA, unprofessional conduct for department programs.

The 2025 Montana Legislature passed House Bill 435, amending and standardizing unprofessional conduct for professional and occupational licensing boards and programs. The bill's changes will be effective October 1, 2025. The department is striking (2), (3), (9), (10), (14), and (18), as they unnecessarily duplicate the amended unprofessional conduct provisions for program licensees in 37-1-410, MCA.

It is reasonably necessary to delete (4) as the conduct is included in generally accepted standards of practice in 37-1-410, MCA.

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## **Small Business Impact**

Senate Bill 198 (2025) amended the law so that a license is only required for electronic security firms that sell, install, service, or maintain electronic security systems that automatically communicate to a public safety agency or public safety answering point. This may reduce the number of electronic security firms that need licenses and could reduce operating expenses for firms no longer requiring licensure and are small businesses.

Senate Bill 198 also removed the requirement for private security guards to work specifically for private security firms, but kept the requirement that the guards are employed by someone. To the extent that private security guards may be employed by small businesses in Montana that are not private security firms, and the employer provides the required insurance, IDs, and uniforms to the employed security guards, there may be some impact to operating expenses of that employer.

The department has determined that the proposed rule changes will not create a significant and direct impact on small businesses. Documentation of the small business impact analysis is available upon request.

The department estimates that all fee changes will affect approximately 2,932 new applicants and renewing licensees and result in a \$109,850 reduction in annual revenue.

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### **Bill Sponsor Notification**

The primary sponsor of Senate Bill 198 (2025) was contacted by email April 28, 2025. The primary sponsor of House Bill 435 (2025) was contacted by email May 14, 2025.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Jennifer Stallkamp

### **Approval**

Sarah Swanson, Commissioner



MONTANA  
ADMINISTRATIVE  
REGISTER

BOARD OF MASSAGE THERAPY  
DEPARTMENT OF LABOR AND INDUSTRY

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-265.1

**Summary**

Implementation of House Bill 246 pertaining to substantial equivalency

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**Hearing Date and Time**

Tuesday, November 4, 2025, at 9:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/89890553881>

Meeting ID: 898 9055 3881; Password: 1103190368

Dial by Telephone: +1 646 558 8656

Meeting ID: 898 9055 3881; Password: 1103190368

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Tuesday, October 28, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.

While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. House Bill 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the Board of Massage Therapy (board) is proposing to adopt NEW RULE 1. The board has compared current licensure standards of the fifty United States for board licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards. The list will be published on the board's website. The board will analyze other states' licensing standards annually, and update the published list as needed.

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## **Rulemaking Actions**

### **ADOPT**

The rule proposed to be adopted is as follows:

## **NEW RULE 1 SUBSTANTIAL EQUIVALENCY**

- (1) The board adopts and incorporates by reference the 2025 substantial equivalency list for the Board of Massage Therapy publication. The publication is available on the board's website.
- (2) The board intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

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### **Small Business Impact**

Pursuant to 2-4-111, MCA, the Montana small businesses that will probably be affected by the proposed rule changes are those employing massage therapists. The Board of Massage Therapy has determined that the proposed rule changes will not create a significant and direct impact on these small businesses.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted on July 7, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](https://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Quinlan L. O'Connor

**Approval**

Sarah Swanson, Commissioner

**Approval**

Jennifer Roth, Presiding Officer, Board of Massage Therapy



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF LABOR AND INDUSTRY

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-268.1

**Summary**

Implementing industry-recognized credentials rules and House Bill 252 (2025)

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**Hearing Date and Time**

Monday, November 3, 2025, at 3:00 p.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/86809977153>

Meeting ID: 868 0997 7153; Password: 8486491174

Dial by Telephone: +1 646 558 8656

Meeting ID: 868 0997 7153; Password: 8486491174

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Monday, October 27, 2025, at 5:00 p.m.

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## Contact

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## General Reasonable Necessity Statement

The 2025 Montana Legislature passed House Bill (HB) 252 which was signed by the Governor May 8, 2025. Section 15 of the bill tasks the Department of Labor and Industry (department) with establishing a list of industry-recognized credentials, combinations of credentials, work-based learning experiences, factors for inclusion and exclusion, and the credit value for each credential. Further, the bill tasks the department with adopting a process for high school and K-12 school districts to submit proposed recognition for credentials and work-based learning experiences.

The adoption of this list is necessary to ensure transparency, accountability, and alignment between education, training programs, and workforce demand. A clear list ensures that approved industry-recognized credentials and work-based learning experiences are valued by employers, lead to in-demand occupations, and reflect current industry standards. By identifying credentials that are valued by employers across in-demand industries, the state ensures that students and job seekers gain relevant, verifiable skills that lead to meaningful employment opportunities.

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## Rulemaking Actions

### ADOPT

The rules proposed to be adopted are as follows:

### NEW RULE 1 (24.22.402) INDUSTRY CREDENTIALS LIST

- (1) The 2025 industry credentials list is adopted and incorporated by reference. The list is available at <https://montanaworks.gov/>.

**Authorizing statute(s):** [Section 15(3) of HB 252]

**Implementing statute(s):** [Section 15(1) of HB 252]

### **Reasonable Necessity Statement**

To implement Section 15 of HB 252, the department is proposing to adopt NEW RULE 1. The department compiled a list of industry-recognized credentials, combinations of credentials, and work-based learning experiences that are aligned with high-demand occupations. This new rule will adopt and incorporate by reference the department's initial list of credentials approved using the qualifying factors set forth in NEW RULE 2. The list will be published on the department's website. The department will review credentials proposed through the petition process outlined in NEW RULE 3, and update the published list as needed.

### **NEW RULE 2 (24.22.405) INDUSTRY-RECOGNIZED CREDENTIAL CREDIT EVALUATION**

- (1) The department reviews industry-recognized credentials against a combination of eligibility factors, requiring that multiple, but not all, of the following factors be satisfied:
  - (a) demonstrated connection to higher-level credentials that deepen industry knowledge;
  - (b) aligns with in-demand occupations and sectors across the state;
  - (c) widely recognized by industry employers, for example by showing that the credential is regularly listed as a required or preferred qualification in job openings;
  - (d) addresses existing skill gaps and identifies new or emerging occupations;
  - (e) accredited by an independent third party;
  - (f) displays evidence of employment in an occupation with average entry level wages of at least 80 percent of the statewide average wage;
  - (g) accessible to various populations for industry advancement;
  - (h) available as a registered apprenticeship through the department;
  - (i) evidence that a student has a job offer from an employer contingent upon completion of the credential.

- (2) The department assigns credit value for an industry-recognized credential against a combination, but not all are required, of the following factors:
  - (a) quality of the proposed curriculum;
  - (b) aligns with in-demand occupations as indicated by the department's employment projections and statewide workforce goals;
  - (c) demonstrates proficiency related to industry skills;
  - (d) evidence of strong assessment procedures;
  - (e) progress toward apprenticeship or further certification;
  - (f) amount of time and effort required for completion.

**Authorizing statute(s):** [Section 15(3) of HB 252]

**Implementing statute(s):** [Section 15(2)(a) of HB 252]

### **Reasonable Necessity Statement**

This rule is necessary to establish a clear, consistent, and transparent framework for the department to evaluate and approve industry-recognized credentials that align with Montana's workforce and education priorities. The eligibility criteria outlined in (1) ensure that approved credentials deepen industry-specific knowledge, align with in-demand occupations, are widely recognized by employers, and address both current and emerging skill gaps across the state. The inclusion of third-party accreditation and registered apprenticeships further reinforces the credibility and workforce relevance of the credentials.

Section (2) provides a structured process for reviewing and assigning credit value to credentials, based on factors such as curriculum quality, time commitment, industry demand, proficiency level, and advancement toward apprenticeship pathways. This ensures that students and learners receive appropriate recognition for their efforts while progressing toward meaningful, high-value employment opportunities.

Adopting this rule supports a credentialing system that is rigorous, responsive to labor market needs, and aligned with the goal of preparing Montanans for high-skill, high-wage careers.

### **NEW RULE 3 (24.22.410) PETITION PROCESS**

- (1) A high school district or K-12 school district may submit proposed industry-recognized credentials on a limited basis for review and recognition to the department.

- (2) The department shall make available a submission form, which a high school district or K-12 school district must complete for the purpose of proposing an industry-recognized credential.
- (3) The department shall evaluate the proposal based upon the factors provided in [NEW RULE 2], and make a determination as to:
  - (a) whether the proposed credential should be awarded; and
  - (b) the credit value of the industry-recognized credential.

**Authorizing statute(s):** [Section 15(3) of HB 252]

**Implementing statute(s):** [Section 15(2) of HB 252]

### **Reasonable Necessity Statement**

This rule is necessary to establish a formal process by which high school and K-12 school districts may propose additional industry-recognized credentials for consideration by the department. Providing school districts with the opportunity to submit credentials ensures that the state's credential list remains responsive to local and regional workforce needs while maintaining statewide consistency and quality standards.

The rule outlines the required submission process and the department's responsibility to evaluate each proposed credential using the eligibility and credit factors established in NEW RULE 2. This ensures that all proposed credentials meet rigorous standards for industry relevance, quality, and learner value. It also allows for the determination of appropriate credit, supporting meaningful recognition of progress toward career readiness.

Adopting this rule supports local engagement in credential development while preserving the integrity and labor-market alignment of the credentialing system.

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### **Small Business Impact**

Pursuant to 2-4-111, MCA, the Montana small businesses that will probably be affected by this rulemaking are industry-specific independent operators. The proposed rules will not create a significant and direct impact on these small businesses.

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### **Bill Sponsor Notification**

The primary bill sponsor was contacted on July 9, 2025, by electronic mail.

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## **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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## **Rule Reviewer**

Quinlan L. O'Connor

## **Approval**

Sarah Swanson, Commissioner



MONTANA  
ADMINISTRATIVE  
REGISTER

BOARD OF DENTISTRY  
DEPARTMENT OF LABOR AND INDUSTRY

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-273.1

**Summary**

Legislative Implementation of House Bills 246, 321, and 584

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**Hearing Date and Time**

Monday, November 3, 2025, at 1:00 p.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/83453419207>

Meeting ID: 834 5341 9207; Password: 7606599703

Dial by Telephone: +1 646 558 8656

Meeting ID: 834 5341 9207; Password: 7606599703

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Monday, October 27, 2025, at 5:00 p.m.

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## Contact

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## General Reasonable Necessity Statement

The board is amending its rules to implement three legislative bills. House Bill (HB) 246, signed by the Governor on April 3, 2025, requires the board to adopt rules regarding substantially equivalent jurisdictions. HB 321, signed by the Governor on April 3, 2025, includes "school-based oral health programs" in the list of allowable places for dental hygienists with limited access permits to provide care, and HB 584, signed by the Governor on May 13, 2025, amends the board's inspection authority for anesthesia permit holders.

The board is proposing these rules to implement these bills including repealing language that now exists in statute, modernizing language, and updating implementation and authorization citations throughout.

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

### 24.138.301 DEFINITIONS

For the purposes of this chapter, the following definitions apply:

- (1) "Administration is as follows:
  - (a) "enteral administration" means the agent is absorbed through the gastrointestinal tract or oral mucosa (oral, rectal, or sublingual);

- (b) "inhalation administration" means a gaseous or volatile agent is introduced into the lungs and absorbed through the gas/blood interface. Because sedation and general anesthesia are a continuum, it is not always possible to predict how an individual patient will respond. Practitioners intending to produce a given level of sedation should be able to diagnose and manage the physiologic consequences (rescue) for patients whose level of sedation becomes deeper than initially intended;
  - (c) "parenteral administration" means the agent is absorbed intramuscularly, intravenously, intranasally, submucosally, subcutaneously, or intraosseously;
  - (d) "transdermal administration" means the agent is absorbed through a patch or by iontophoresis through the skin; and
  - (e) "transmucosal administration" means the agent is absorbed across the mucosa (intranasal, rectal, or sublingual).
- (2) "Certified dental assistant" is a dental auxiliary who has successfully completed all of the following exams and holds current certification from the Dental Assisting National Board:
    - (a) general chairside assisting (GC);
    - (b) radiation health and safety (RHS); and
    - (c) infection control (ICE).
  - (3) "Coronal polishing" is a dental procedure limited to the utilization of abrasive agents on the coronal surfaces of natural and restored teeth for the purpose of plaque and extrinsic stain removal.
  - (4) "Direct supervision" means the provisions of allowable functions by dental hygienists, auxiliaries, or interns with the intent and knowledge of the supervising licensee and while the supervising licensee is on the premises.
  - (5) "General supervision" means the provision of allowable functions by dental hygienists or auxiliaries provided to a current patient of record, with the intent and knowledge of the licensee licensed and residing in the state of Montana. The supervising licensee need not be on the premises.
  - (6) "Inhalation sedation" means the use of nitrous oxide/oxygen in concentrations of up to 70/30 percent to provide mild relaxation and analgesia. Nitrous oxide/oxygen may produce minimal sedation, moderate sedation, deep sedation, or general anesthesia when used in combination with a sedative agent or agents. Inhalation sedation may be used in the pediatric or adult populations.
  - (7) "Maximum recommended dose" (MRD) means the maximum Food and Drug Administration (FDA)-recommended dose of a drug, as printed in the FDA-approved labeling for unmonitored dose.

- (8) "Minimal sedation" means ~~a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected~~ has the same meaning as in 37-4-101, MCA. When the intent is minimal sedation for adults, the appropriate dose of a single enteral drug is no more than the MRD of a drug that can be prescribed for unmonitored home use.
- (9) ~~"Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. The drugs and/or techniques used for moderate sedation should render the unintended loss of consciousness unlikely. Repeated dosing of an agent before the effects of previous dosing is obtained may result in a greater alteration of the state of consciousness than intended. A patient whose only response is reflex withdrawal from a painful stimulus is not in a state of moderate sedation.~~
- ~~(10)~~(9) "Prophylaxis" is a preventative and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, material alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling, root planing, and subgingival curettage, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist.
- ~~(11)~~(10) "Supplemental dosing" means a single additional dose of the initial dose of the initial drug necessary for prolonged procedures under minimal sedation. The supplemental dose should not exceed one-half of the initial total dose and should not be administered until the dentist has determined that one clinical half-life of the initial dose has passed. The total aggregate dose must not exceed one and a half times the MRD on the day of administration.
- ~~(12)~~(11) "Trained healthcare professional" means a person who serves as an anesthesia monitor in a dental office. Such person shall maintain current certification in the American Heart Association's Basic Life Support for Healthcare Providers or its equivalent, shall be trained in monitoring patient vital signs, and shall be competent in the use of monitoring and emergency equipment appropriate for the level of sedation utilized. (The term "competent" as used in these rules means displaying special skill or knowledge derived from training and experience).

**Authorizing statute(s):** 37-1-131, 37-4-205, 37-4-340, 37-4-511, 37-29-201, MCA

**Implementing statute(s):** 37-1-131, 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

### **Reasonable Necessity Statement**

The board is amending this rule to repeal definitions now in statute after the passage of HB 584, which transferred the definitions of “minimal sedation” and “moderate sedation” into statute. The board elected to keep the last sentence in the definition of “minimal sedation” as guidance for practitioners as the statutory definition does not include that sentence.

### **24.138.425 LIMITED ACCESS PERMIT TREATMENT GUIDELINES—PRACTICING UNDER PUBLIC HEALTH SUPERVISION**

- (1) Pursuant to 37-4-405, MCA, the LAP dental hygienist practicing under public health supervision, including providing prescriptive services, shall adhere to the following ~~medical health~~ guidelines:
  - (a) The LAP dental hygienist shall gather and review the patient's current medical history, including but not limited to:
    - (i) diagnosed chronic diseases;
    - (ii) surgical procedures;
    - (iii) medications;
    - (iv) drug allergies and/or adverse reactions;
    - (v) blood pressure and pulse rate; and
    - (vi) previous difficulty associated with dental procedures.
  - (b) The LAP dental hygienist may provide dental hygiene preventative services to a patient without prior physician, dentist, nurse practitioner, or physician assistant authorization, unless the patient has:
    - (i) a medical condition requiring premedication;
    - (ii) uncontrolled hypertension; or
    - (iii) uncontrolled diabetes.
  - (c) If a patient has one or more severe systemic diseases, the LAP dental hygienist shall consult with a physician, dentist, nurse practitioner, or physician assistant responsible for the patient's care regarding the appropriateness of treatment and the conditions under which to provide dental hygiene preventative services.

- (2) Pursuant to 37-4-405, MCA, the LAP dental hygienist practicing under public health supervision shall adhere to the following ~~dental health~~ guidelines:
- (a) The LAP dental hygienist shall provide to the public health facility or school-based oral health program with a disclaimer indicating that the dental hygiene preventative services provided do not preclude the need for a comprehensive examination by a licensed dentist.
  - (b) The LAP dental hygienist shall recommend patient referral to a licensed Montana dentist once each calendar year, or as the patient's dental health status indicates. The patient's records shall be made available for continued comprehensive dental care.
  - (c) The LAP dental hygienist shall document the patient dental history and conduct a screening appraisal prior to providing dental hygiene preventative services.
  - (d) If a LAP dental hygienist exposes radiographs, a licensed Montana dentist shall evaluate the radiographs within 30 days of exposure.
  - (e) The LAP dental hygienist ~~shall~~ is responsible for maintaining a dental record including, but not limited to:
    - (i) adverse medical history;
    - (ii) dental history and charting;
    - (iii) results of dental screening;
    - (iv) summary of discussions and consultations with a physician(s) and/or dentist(s);
    - (v) dental hygiene preventative services provided;
    - (vi) any agent prescribed, administered, or dispensed including dose amount and refill, date of the action, and rationale for prescribing; and
    - (vii) any radiographs exposed.
  - ~~(f) Patient dental records shall be the responsibility of the public health facility where the dental hygiene preventative services are provided.~~

**Authorizing statute(s):** 37-1-131, 37-4-205, 37-4-401, 37-4-405, MCA

**Implementing statute(s):** 37-1-131, 37-4-401, 37-4-405, MCA

#### **Reasonable Necessity Statement**

The board is amending this rule due to the passage of HB 321, which creates a new category of “school-based oral health programs” in which limited access permit holders may practice.

Following a prior active supervision process and the board’s subsequent 2024 rulemaking to set standards for schools included in public health facilities, the Economic Affairs Interim Committee (EAIC) formally objected the proposed rule. During the 2025 Legislature, dental stakeholders, practitioners, and legislators worked together to identify and address the concerns raised by the EAIC. The result, HB 321, created a distinct category of “school-based oral health programs” where limited access permit holders may provide services.

The board's proposed changes to this rule add "school-based oral health program" to existing language to reflect the Legislature's intent that school-based programs are distinct from other public health facilities, but that LAP hygienists may provide services for those programs as well.

#### **24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT**

- (1) The board shall issue a limited access permit (LAP) to a Montana licensed dental hygienist who:
  - (a) possesses an active, unrestricted Montana dental hygiene license;
  - (b) certifies that the dental hygienist has actively practiced either:
    - (i) 2400 clinical hours over the last three years; or
    - (ii) a career total of 3000 hours, with a minimum of 350 hours in each of the last two years;
  - (c) provides the name of the applicant's current liability insurance carrier, policy number, and expiration date;
  - (d) acknowledges on the application that the applicant understands which public health facilities and school-based oral health programs are eligible to provide services under a limited access permit pursuant to 37-4-405, MCA;
  - (e) provides certificates of attendance of completion of 12 additional continuing education credits for the three-year reporting period immediately preceding LAP application pursuant to ARM 24.138.2105; and
  - (f) submits a completed application and pays all appropriate fees.
- (2) ~~In addition to the authorized public health facilities already defined under~~ Pursuant to 37-4-405, MCA, the board identifies the following additional public health facilities and programs where LAP services may be provided:
  - (a) ~~\*schools that receive federal funds under Title I of the Elementary and Secondary Education Act;~~



- ~~(b) \*schools in which at least 65% of the student population is eligible for free or reduced price lunch under federal guidelines;~~
- ~~(e)(a) hospice facilities;~~
- ~~(d)(b) family violence shelters; and~~
- ~~(e)(c) homeless shelters.~~
- (3) Pursuant to 37-4-405, MCA, the board identifies the following school-based oral health programs where LAP services may be provided:
  - (a) schools that receive federal funds under Title I of the Elementary and Secondary Education Act; and
  - (b) schools in which at least 65% of the student population is eligible for free or reduced price lunch under federal guidelines.

~~[\*Editor's Note: Subsections (2)(a) and (b) have been objected to by the Economic Affairs Interim Committee. Per 2-4-306(4)(c), MCA, these subsections are not effective until the day after final adjournment of the 2025 legislative session. Until that time, portions of the previous version of this rule are effective. For further information on this matter, contact the Department of Labor and Industry.]~~

**Authorizing statute(s):** 37-4-205, 37-4-401, 37-4-405, MCA

**Implementing statute(s):** 37-4-401, 37-4-405, MCA

### **Reasonable Necessity Statement**

The board is amending this rule due to the passage of HB 321, which creates a new category of “school-based oral health programs” in which limited access permit holders may practice.

Following a prior active supervision process and the board’s subsequent 2024 rulemaking to set standards for schools included in public health facilities, the Economic Affairs Interim Committee (EAIC) formally objected to the proposed rule. During the 2025 Legislature, dental stakeholders, practitioners, and legislators worked together to identify and address the concerns raised by the EAIC. The result, HB 321, created a distinct category of “school-based oral health programs” where limited access permit holders may provide services, and charged the board with identifying schools in rule.

Prior to 2024, this rule had previously listed individual schools as facilities LAP hygienists could practice but had not established criteria as to how it selected facilities for inclusion on the list. In 2024, rather than list individual schools the board established criteria. Due to the EAIC's formal objection the rule did not take effect until the day after the 2025 Legislature adjourned. The board is not proposing to amend the criteria it reviewed and approved in 2024 for what are

now called school-based oral health programs where LAP hygienists may practice under HB 321 but rather to reflect the legislature's intent that school-based oral health programs are distinct from public health facilities.

#### **24.138.3221 MINIMUM QUALIFYING STANDARDS**

- ~~(1)~~ A Montana licensed dentist must possess a permit to administer moderate sedation or deep sedation/general anesthesia.
- ~~(2)~~(1) All requirements for the use of moderate sedation or deep sedation/general anesthesia apply, regardless of the agent used or the route of administration, when the intended or probable effect is a level of depression greater than minimal sedation.
- ~~(3)~~(2) A deep sedation/general anesthesia permit is required to administer or employ any agent(s) which has a narrow margin for maintaining consciousness, including, but not limited to, ultrashort-acting barbiturates, including, but not limited to, sodium methohexital, thiopental, propofol, ketamine, etomidate, and similarly acting drugs, or quantity of agent(s), or technique(s), or any combination, thereof, that would possibly render a patient deeply sedated or generally anesthetized.
- ~~(4)~~(3) All applicants for deep sedation/general anesthesia permits must have:
  - (a) completed a residency accredited by the Commission on Dental Accreditation in one of the following areas:
    - (i) a minimum of four years in an oral and maxillofacial surgery residency; or
    - (ii) a minimum of two years in an advanced general dentistry education program in dental anesthesiology; and
  - (b) completed an advanced course in cardiac life support within two years of the date of permit application. Web-based courses must include a hands-on lab or megacode portion of training.
- ~~(5)~~(4) All applicants for moderate sedation permits must have:
  - (a) received formal training in moderate sedation techniques from an institution, organization, or training course. If training for moderate sedation is through continuing education, proof of course content must accompany the initial application in the form of a course outline or syllabus; ~~and~~
  - (b) a minimum of 60 hours of instruction plus management of at least 20 dental patients, by the intravenous route-; and

- (c) completed an advanced course in cardiac life support within two years of the date of permit application. Web-based courses must include a hands-on lab or megacode portion of training.

~~(6)~~(5) Applicants seeking to use inhalation sedation must:

- (a) complete a course of instruction of a minimum of 14 hours, including a clinical component. This course of instruction may be completed as part of the predoctoral dental education program or in a postdoctoral continuing education competency course; or
- (b) demonstrate competence and skill in administering nitrous oxide/oxygen sedation by virtue of experience and/or comparable alternative training.

~~(7)~~(6) Applicants seeking to administer enteral minimal and/or combination inhalation sedation must complete a minimum of 16 hours of training, including a clinical component. Training must include the treatment of a compromised airway and other life-threatening emergencies. The course may be completed in a predoctoral dental education curriculum or in a postdoctoral continuing education competency course.

- (a) Supplemental dosing can be used for enteral minimal sedation or enteral minimal sedation and/or combination inhalation sedation.
- (b) Nitrous oxide/oxygen may only be used with a single drug for minimal sedation.

~~(8)~~(7) Applicants who meet all requirements for a moderate sedation or deep sedation/general permit with the exception of having passed an initial inspection ~~may be issued a temporary permit to administer moderate sedation or deep sedation/general prior to the initial inspection~~ will be issued a temporary permit per [HB 584, section 1 (2025)].

**Authorizing statute(s):** HB 584 (2025), 37-1-131, 37-4-205, MCA

**Implementing statute(s):** HB 584 (2025), 37-1-131, 37-4-101, 37-4-511, MCA

### **Reasonable Necessity Statement**

The board is amending this rule after passage of HB 584, which codified the board's inspection authority and requirements for holding anesthesia permits. The amendment removes language now in statute and modernizes language to mirror the statutory authority in HB 584 to issue temporary permits. The board is also updating authorization and implementation citations to include HB 584.

#### **24.138.3227 ONSITE INSPECTION OF PERMIT HOLDERS**

- (1) Each ~~moderate sedation or deep sedation/general anesthesia~~ permit holder shall be inspected initially, and at intervals not to exceed five years, by a qualified inspector ~~appointed by the board per [HB 584 Section 1 (2025)]~~. ~~Any permit holder whose facility is to be inspected shall be notified at least 30 days prior to the inspection, or sooner if mutually agreed. The name of the inspector shall be provided to the dentist.~~
- (2) The onsite inspection shall include:
  - (a) demonstration of:
    - (i) recognition and management of complications likely to occur, considering the techniques being used;
    - (ii) knowledge of respective roles in normal operating procedures and in various emergency situations; and
    - (iii) proficiency in handling emergency situations;
  - (b) the presence of drugs and equipment appropriate for the level of sedation or anesthesia to be provided; and
  - (c) evaluation of the accuracy of anesthesia record-keeping.
- (3) If the inspector identifies violations, the permit holder may be subject to disciplinary action by the board.
- (4) A licensee who provides anesthesia at multiple facilities must be inspected at one facility only. The licensee must attest all facilities are compliant for the equipment requirements.

**Authorizing statute(s):** HB 584 (2025), 37-1-131, 37-4-205, MCA

**Implementing statute(s):** HB 584 (2025), 37-1-131, 37-4-101, 37-4-511, MCA

#### **Reasonable Necessity Statement**

The board is amending this rule after passage of HB 584, which codifies the board's inspection authority and requirements for holding anesthesia permits. The amendments remove language now in statute and modernize language to mirror statutory terms and reflect the board's inspection process.

The board is also updating authorization and implementation citations to include HB 584.

## **ADOPT**

The rule proposed to be adopted is as follows:

### **NEW RULE 1 (24.138.520) SUBSTANTIAL EQUIVALENCY**

- (1) The board adopts and incorporates by reference the 2025 substantial equivalency list for the Board of Dentistry publication. The publication is available on the board's website.
- (2) The board intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

### **Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.

While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. House Bill 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the board is proposing to adopt NEW RULE 1. The board has compared current licensure standards of the fifty United States for board licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards. The

list will be published on the board website. The board will analyze other states' licensing standards annually, and update the published list as needed.

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### **Small Business Impact**

The board identified dental offices and dentistry offices as the class of small businesses most likely to be affected by the proposed rule. The board identified no significant and direct impacts, but concluded possible impacts may include more streamlined licensing for offices wishing to hire from out of state, or applicants would have more information available about the licensing requirements if researching whether they would be coming from a substantially equivalent jurisdiction.

The board is not changing any regulation requirements and is not adopting any new fees. There are no new fiscal impacts to small businesses.

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### **Bill Sponsor Notification**

The primary bill sponsors were contacted on July 14, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](https://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Jennifer Stallkamp

### **Approval**

Sarah Swanson, Commissioner

### **Approval**

Jill Frazier, D.D.S., Chair, Board of Dentistry



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**BOARD OF OUTFITTERS  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-321.1**

**Summary**

Implementation of House Bill 246 pertaining to substantial equivalency

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**Hearing Date and Time**

Friday, October 31, 2025, at 9:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/84965875271>

Meeting ID: 849 6587 5271; Password: 9277142016

Dial by Telephone: +1 646 558 8656

Meeting ID: 849 6587 5271 ; Password: 9277142016

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 24, 2025, at 5:00 p.m.

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## Contact

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## Rulemaking Actions

### ADOPT

The rule proposed to be adopted is as follows:

#### NEW RULE 1 (24.171.419) SUBSTANTIAL EQUIVALENCY

- (1) The board adopts and incorporates by reference the 2025 substantial equivalency list for the Board of Outfitters publication. The publication is available on the board's website.
- (2) The board intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

## Reasonable Necessity Statement

The 2025 Montana Legislature passed House Bill 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.



While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. House Bill 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the board is proposing to adopt NEW RULE 1 (24.171.419). The board has compared current licensure standards of the fifty United States for board-issued licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards. The list will be published on the board's website. The board will analyze other states' licensing standards annually, and update the published list as needed.

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### **Small Business Impact**

The board identified outfitters as the only class or group of small businesses that will be affected by this proposed new rule. The board only licenses outfitters and guides, and both license types are employed by outfitters. The board determined that the impact of this new rule is unlikely to be significant; however, the board determined that any impact of this new rule is likely to be positive. First, the rule will allow for easier and more efficient licensure for applicants from states with substantially equivalent licenses. Outfitters will benefit if their staff can obtain licenses in a faster and more efficient manner, particularly for popular activities during short recreation seasons. Second, the proposed new rule may help to increase public awareness of outfitter and guide licensure requirements because the rule requires additional public posting of licensure requirements for Montana and substantially equivalent states.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted on August 12, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](https://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

**Rule Reviewer**

Quinlan L. O'Connor

**Approval**

Sarah Swanson, Commissioner

**Approval**

John Way, Chair, Board of Outfitters



MONTANA  
ADMINISTRATIVE  
REGISTER



**BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-325.1**

**Summary**

Implementing HB 246 pertaining to substantial equivalency

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**Hearing Date and Time**

Thursday, October 30, 2025, at 3:00 p.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/84385093683>

Meeting ID: 843 8509 3683; Password: 4122445029

Dial by Telephone: +1 646 558 8656

Meeting ID: 843 8509 3683; Password: 4122445029

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 23, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity. While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs.

House Bill 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers. To implement the legislation and further the endorsement licensing process, the board is proposing to adopt NEW RULE 1. The board has compared current licensure standards of the fifty United States for board licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards. The list will be published on the board's website. The board will analyze other states' licensing standards annually, and update the published list as needed.

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## **Rulemaking Actions**

### **ADOPT**

The rule proposed to be adopted is as follows:

### **NEW RULE 1 SUBSTANTIAL EQUIVALENCY**

- (1) The board adopts and incorporates by reference the 2025 substantial equivalency list for the Board of Architects and Landscape Architects publication. The publication is available on the board's website.
- (2) The board intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

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### **Small Business Impact**

The board identified architecture and landscape architecture firms as the class of small businesses most likely to be affected by the proposed new rule. The board identified no significant and direct impacts, but concluded possible impacts may include more streamlined licensing for firms wishing to hire from out of state, or applicants would have more information available about the licensing requirements if researching whether they would be coming from a substantially equivalent jurisdiction.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted on August 12, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](https://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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**Rule Reviewer**

Jennifer Stallkamp

**Approval**

Sarah Swanson, Commissioner

**Approval**

Maire Eithne O'Neill, Chair, Board of Architects and Landscape Architects



**MONTANA  
ADMINISTRATIVE  
REGISTER**

**BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-347.1**

**Summary**

Implementation of House Bill 246 pertaining to substantial equivalency

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**Hearing Date and Time**

Thursday, October 30, 2025, at 11:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/89563190766>

Meeting ID: 895 6319 0766; Password: 7119107184

Dial by Telephone: +1 646 558 8656

Meeting ID: 895 6319 0766; Password: 7119107184

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 23, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

The 2025 Montana Legislature passed House Bill 246 which was signed by the Governor April 3, 2025, and will become effective October 1, 2025. The bill standardizes substantial equivalency determinations in professional licensing and eliminates duplicative statutory sections regarding equivalency and reciprocity.

While historically available to applicants licensed in other states or jurisdictions, licensure by substantial equivalency has never been consistent among the professional licensing boards and programs. House Bill 246 creates a standard definition for determining substantial equivalency to be uniformly utilized by all the boards and programs when processing endorsement applications. This will create overall efficiencies in processing endorsement applications and reduce licensing wait times for applicants and employers.

To implement the legislation and further the endorsement licensing process, the board is proposing to adopt NEW RULE 1. The board has compared current licensure standards of the fifty United States for board-issued licensees and determined those that are substantially equivalent per the definition in 37-1-302, MCA. This new rule will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards. The list will be published on the board's website. The board will analyze other states' licensing standards annually, and update the published list as needed.

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## **Rulemaking Actions**

### **ADOPT**

The rule proposed to be adopted is as follows:



## **NEW RULE 1 SUBSTANTIAL EQUIVALENCY**

- (1) The board adopts and incorporates by reference the 2025 substantial equivalency list for the Board of Veterinary Medicine publication. The publication is available on the board's website.
- (2) The board intends to review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.
- (3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

**Authorizing statute(s):** 37-1-131, MCA

**Implementing statute(s):** 37-1-304, MCA

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### **Small Business Impact**

Pursuant to 2-4-111, MCA, the Montana small businesses that will probably be affected by this rulemaking are independent veterinary practices. The board has determined that the proposed rule changes will not create a significant and direct impact on these small businesses. Documentation of the small business impact analysis is available upon request.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted on August 19, 2025, by electronic mail.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](https://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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**Rule Reviewer**

Jennifer Stallkamp

**Approval**

Sarah Swanson, Commissioner

**Approval**

Katie Rein, D.V.M., Chair, Board of Veterinary Medicine



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-152.1**

**Summary**

Amendment of ARM 37.27.902, 37.85.104, 37.85.105, 37.85.106, 37.82.206, 37.86.1006, 37.86.3607, and 37.88.101 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates

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**Hearing Date and Time**

Friday, October 31, 2025, at 2:00 p.m.

**Virtual Hearing Information**

Join Zoom Meeting: <https://mt-gov.zoom.us/j/89014858061?pwd=xG1MpJb30CXFjx0opwxHTtkO0yEkpf.1>

Meeting ID: 890 1485 8061 and Password: 457068

Dial by Telephone +1 646 558 8656

Meeting ID: 890 1485 8061 and Password: 457068

Find your local number: <https://mt-gov.zoom.us/j/89014858061?pwd=xG1MpJb30CXFjx0opwxHTtkO0yEkpf.1>

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 17, 2025, at 5:00 p.m.

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## Contact

Bailey Yuhas  
(406) 329-7913  
hhsadminrules@mt.gov  
Fax: (406) 444-9744

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

### 37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS

- (1) The purpose of rules contained in this subchapter is to establish standards for the coverage and reimbursement of substance use disorder services under the Montana Medicaid Program.
- (2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated January 1, 2025, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.
- (3) In addition to the requirements contained in rule, the department has developed and published the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~January 1, 2024~~ July 1, 2025, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of

Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at:  
<https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

**Authorizing statute(s):** 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA

**Implementing statute(s):** 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

### **37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES**

- (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Behavioral Health and Developmental Disabilities Division on the dates stated:
  - (a) Mental health crisis services, as provided in ARM 37.88.101, is effective ~~July 1, 2023 (fee schedule version 2), and July 1, 2024~~ July 1, 2025.
  - (b) Goal 189, as provided in ARM 37.89.201, is effective July 1, 2023.
  - (c) Youth respite care services, as provided in ARM 37.87.2203, is effective July 1, ~~2024~~ 2025.
  - (d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~July 1, 2023, and July 1, 2024~~ July 1, 2025.
- (2) Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov>. A description of the method for setting the reimbursement rate and the administrative rules applicable to the covered services are published in the chapter or subchapter of this title regarding that service.

**Authorizing statute(s):** 53-2-201, 53-6-101, 53-6-113, MCA

**Implementing statute(s):** 53-2-201, 53-6-101, 53-6-111, MCA

### **37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES**

- (1) The Montana Medicaid Program establishes provider reimbursement rates for medically necessary, covered services based on the estimated demand for services and the legislative appropriation and federal matching funds. Provider reimbursement rates are stated in fee schedules for covered services applicable to the identified Medicaid program. New rates are established by revising the identified program's fee schedule and adopting the new fees as of the stated effective date of the schedule. Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov>. A description of the method for setting the reimbursement rate and the administrative rules applicable to the covered service are published in the chapter or subchapter of this title regarding that service. The department will make periodic updates, as necessary, to the fee schedules noted in this rule to include new procedure codes and applicable rates and to remove terminated procedure codes.
- (2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.
  - (a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare & Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~88 89~~ Federal Register ~~78818 97710~~ (~~Nov. 16, 2023~~ December 9, 2024), effective ~~January 1, 2024~~ January 1, 2025, which is adopted and incorporated by reference. Procedure codes created after January 1, 2025, will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.
  - (b) Fee schedules are effective ~~January 1, 2025~~ July 1, 2025. The fee schedules are applicable to claims for services that are provided on or after the effective date; prior fee schedules remain applicable to claims for services provided prior to that date.
    - (i) The conversion factor for physician services is ~~\$43.96~~ \$45.41. The conversion factor for allied services is ~~\$27.24~~ \$28.23. The conversion factor for mental health services is ~~\$22.47~~ 22.24. The conversion factor for anesthesia services is ~~\$31.78~~ \$32.82.
  - (c) Policy adjustors are effective July 1, 2023. The maternity policy adjustor is 100%. The family planning policy adjustor is 105%. The psychological testing policy adjustor is 200%. The psychological testing policy adjustor applies only to psychologists.
  - (d) The BCBA/BCBA-D services policy adjuster is 115.8%, effective July 1, 2021.
  - (e) The payment-to-charge ratio is effective ~~July 1, 2024~~ July 1, 2025, and is ~~48.02%~~ 47.42% of the provider's usual and customary charges.

- (f) The specific percentages for modifiers adopted by the department are effective July 1, 2016.
  - (g) Psychiatrists receive a 112% provider rate of reimbursement adjustment to the reimbursement of physicians effective July 1, 2016.
  - (h) Midlevel practitioners receive a 90% provider rate of reimbursement adjustment to the reimbursement of physicians for those services described in ARM 37.86.205(5)(b), effective July 1, 2016.
  - (i) Optometric services receive a ~~114.45%~~ 114.53% provider rate of reimbursement adjustment to the reimbursement for allied services, as provided in ARM 37.85.105(2), effective ~~July 1, 2024~~ July 1, 2025.
  - (j) Reimbursement for physician-administered drugs described in ARM 37.86.105 is determined pursuant to 42 U.S.C. 1395w-3a.
  - (k) Reimbursement for vaccines described at ARM 37.86.105 is effective July 1, 2020.
- (3) The department adopts, and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.
- (a) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:
    - (i) the APR-DRG fee schedule for inpatient hospitals, as provided in ARM 37.86.2907, effective ~~July 1, 2024~~ July 1, 2025; and
    - (ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~41.0~~ 42.0, contained in the APR-DRG Table of Weights and Thresholds, effective ~~July 1, 2024~~ July 1, 2025. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~July 1, 2024~~ July 1, 2025.
  - (b) The outpatient hospital services fee schedules including:
    - (i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the CMS in 89 Federal Register 93912 (Nov. 27, 2024), effective January 1, 2025, and reviewed annually by CMS, as required in 42 CFR 419.50 and as updated by the department;
    - (ii) the conversion factor for outpatient services on or after ~~July 1, 2024~~ July 1, 2025 is ~~\$60.72~~ \$62.54;
    - (iii) the Medicaid statewide average outpatient cost-to-charge ratio is 48.59%; and

- (iv) the bundled composite rate of ~~\$281.86~~ \$290.32 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~July 1, 2024~~ July 1, 2025.
- (c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2025~~ July 1, 2025.
- (d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2024~~ 2025 resulting in a dental conversion factor of ~~\$38.37~~ \$39.52 and fee schedule is effective ~~July 1, 2024~~ July 1, 2025.
- (e) The Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~July 1, 2024~~ July 1, 2025.
- (f) The outpatient drugs reimbursement dispensing fees range as provided in ARM 37.86.1105(3)(b), is effective ~~July 1, 2024~~ July 1, 2025:
  - (i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~\$5.28~~ \$4.11 and the maximum is ~~\$17.01~~ \$17.52;
  - (ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~\$5.28~~ \$4.11 and the maximum is ~~\$14.73~~ \$15.17; or
  - (iii) for pharmacies with prescription volume greater than or equal to 70,000, the minimum is ~~\$5.28~~ \$4.11 and the maximum is ~~\$12.46~~ \$12.83.
- (g) The outpatient drugs reimbursement compound drug dispensing fee range, as provided in ARM 37.86.1105(5), will be \$12.50, \$17.50, or \$22.50, based on the level of effort required by the pharmacist, effective July 1, 2013.
- (h) The outpatient drugs reimbursement vaccine administration fee, as provided in ARM 37.86.1105(6), will be \$21.32 for the first vaccine and ~~\$15.53~~ \$16.04 for each additional vaccine administered on the same date of service, effective ~~July 1, 2024~~ July 1, 2025.
- (i) The outpatient drugs reimbursement, unit dose prescriptions fee as provided in ARM 37.86.1105(10), will be \$0.75 per pharmacy-packaged unit dose medication, effective November 1, 2013.
- (j) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2024~~ July 1, 2025.
- (k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs), as provided in ARM 37.86.1802, effective ~~January 1, 2025~~ July 1, 2025. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2025~~ July 1, 2025.



- (l) The nutrition services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2024~~ July 1, 2025.
- (m) The children's special health services fee schedule, as provided in ARM 37.86.2207(2), is effective July 1, 2019.
- (n) The orientation and mobility specialist services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2024~~ July 1, 2025.
- (o) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2024~~ July 1, 2025.
- (p) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective ~~July 1, 2024~~ July 1, 2025.
- (q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2025~~ July 1, 2025.
- (r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~January 1, 2025~~ July 1, 2025.
- (s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~January 1, 2025~~ July 1, 2025.
- (t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2025~~ July 1, 2025.
- (u) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2024~~ July 1, 2025.
- (v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2025~~ July 1, 2025.
- (w) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~July 1, 2024~~ July 1, 2025.
- (x) The Targeted Case Management for High-Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~July 1, 2024~~ July 1, 2025.
- (y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2025~~ July 1, 2025.
- (z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2025~~ July 1, 2025.
- (aa) The private duty nursing services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2024~~ July 1, 2025.

- (4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:
- (a) The Big Sky Waiver home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective July 1, ~~2024~~ 2025.
  - (b) The home health services fee schedule, as provided in ARM 37.40.705, is effective July 1, ~~2024~~ 2025.
  - (c) The personal ~~assistance~~ care services fee schedule, as provided in ARM 37.40.1135, is effective July 1, ~~2024~~ 2025.
  - (d) The self-directed personal ~~assistance~~ care services fee schedule, as provided in ARM 37.40.1135, is effective July 1, ~~2024~~ 2025.
  - (e) The community first choice services fee schedule, as provided in ARM 37.40.1026, is effective July 1, ~~2024~~ 2025.
- (5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Behavioral Health and Developmental Disabilities Division on the date stated:
- (a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~January 1, 2025~~ July 1, 2025.
  - (b) The home and community-based services for adults with severe disabling mental illness fee schedule, as provided in ARM 37.90.408, is effective ~~July 1, 2024~~ July 1, 2025.
  - (c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~January 1, 2025~~ July 1, 2025.
- (6) For the Behavioral Health and Developmental Disabilities Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~July 1, 2023 (fee schedule version 2)~~ and ~~July 1, 2024~~ July 1, 2025.

**Authorizing statute(s):** 53-2-201, 53-6-113, MCA

**Implementing statute(s):** 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

### **37.85.106 MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE**

- (1) The Montana Medicaid Program establishes provider reimbursement rates for medically necessary, covered services based on the estimated demand for services and the legislative appropriation and federal matching funds.
- (2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted Case Management Fee Schedule effective ~~July 1, 2024~~ July 1, 2025, for the following programs within the Behavioral Health and Developmental Disabilities Division:
  - (a) Targeted Case Management Services (TCM) for Youth with Serious Emotional Disturbance (SED), as provided in ARM 37.87.901;
  - (b) Targeted Case Management Services for Substance Use Disorders (SUD), as provided in ARM 37.27.905; and
  - (c) Targeted Case Management Services for Adults with Severe Disabling Mental Illness (SDMI), as provided in ARM 37.86.3515.
- (3) Copies of the department's current fee schedules are posted at <https://medicaidprovider.mt.gov>.

**Authorizing statute(s):** 53-2-201, 53-6-113, MCA

**Implementing statute(s):** 53-2-201, 53-6-101, 53-6-113, MCA

### **37.85.206 SERVICES PROVIDED**

- (1) Except as otherwise provided in this rule, the following medical or remedial care and services are available to all persons who are eligible for Medicaid benefits under this chapter, including deceased persons, categorically related, who would have been eligible had death not prevented them from applying.
  - (a) inpatient hospital services;
  - (b) outpatient hospital services;
  - (c) non-hospital laboratory and x-ray services;
  - (d) nursing facility services;
  - (e) early and periodic screening, diagnosis, and treatment services;
  - (f) physician's services;
  - (g) podiatry services;
  - (h) outpatient physical therapy services;

- (i) speech therapy, audiology and hearing aid services;
- (j) outpatient occupational therapy services;
- (k) home health care services;
- (l) personal care services in a member's home;
- (m) home dialysis services;
- (n) private duty nursing services;
- (o) clinic services;
- (p) dental services;
- (q) outpatient drugs;
- (r) durable medical equipment, prosthetic devices, and medical supplies;
- (s) eyeglasses and optometric services;
- (t) transportation and per diem;
- (u) ambulance services;
- (v) specialized nonemergency transportation;
- (w) family planning services;
- (x) home and community services;
- (y) mid-level practitioner services;
- (z) hospice services;
- (aa) licensed psychologist services;
- (bb) licensed clinical social worker services;
- (cc) licensed professional counselor services;
- (dd) inpatient psychiatric services;
- (ee) mental health center services;
- (ff) case management services;
- (gg) institutions for mental diseases for persons aged 65 and over;
- (hh) payment of premiums, co-insurance, deductibles, and other cost sharing obligations under an individual or group health plan in accordance with the provisions of ARM 37.82.424;
- (ii) diabetes and cardiovascular disease prevention services;

- (jj) habilitative services;
  - (kk) rehabilitative services; and
  - (ll) pediatric complex care assistant services.
- (2) Only those medical or remedial care and services also covered by Medicare are available to a person who is eligible for Medicaid benefits as a qualified Medicare beneficiary under ARM 37.83.201 and 37.83.202.
  - (3) State plan Medicaid benefits are available for members who are Medicaid-covered through the Waiver for Additional Services and Populations (WASP) Medicaid 1115 Waiver as approved by the Centers for Medicare and Medicaid Services (CMS).
    - (a) A person may receive coverage through the WASP Medicaid 1115 Waiver if the person is 18 or older, has severe disabling mental illnesses (SDMI), would qualify for or be enrolled in the state-financed mental health services plan (MHSP) or the WASP Medicaid 1115 Waiver but is otherwise ineligible for Medicaid benefits, and either:
      - (i) the person's income is 0 to 138% of the federal poverty level and the person is eligible for or is enrolled in Medicare; or
      - (ii) the person's income is 139 to 150% of the federal poverty level whether Medicare-eligible or not.
    - (b) A person determined categorically eligible for Medicaid as aged, blind, or disabled (ABD) in accordance with ARM 37.82.901 through 37.82.903 is not subject to the annual ~~\$1,125~~ dental treatment limit incorporated under ARM 37.86.1006. The monies expended for treatment costs exceeding the limit are covered through the WASP Medicaid 1115 Waiver.

**Authorizing statute(s):** 53-2-201, 53-6-113, MCA

**Implementing statute(s):** 53-2-201, 53-6-101, 53-6-103, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

### **37.86.1006 DENTAL SERVICES, COVERED PROCEDURES**

- (1) For purposes of specifying coverage of dental services through the Medicaid program, the department adopts and incorporates by reference the Dental and Denturist Program Provider Manual as provided in ARM 37.85.105(3). The Dental and Denturist Program Provider Manual informs the providers of the requirements applicable to the delivery of services. Copies of the manual are available on the

Montana Medicaid provider web site at <https://medicaidprovider.mt.gov> and from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

- (2) Dentists who are Medicaid provider participants under ARM 37.85.401 may bill medical CPT procedure codes as provided in ARM 37.85.212 and 37.86.101 for any Medicaid covered medical procedure that they are allowed to provide under the Dental Practice Act that is not otherwise listed in the Dental and Denturist Program Provider Manual.
- (3) All services which require prior authorization from the designated review organization are identified in the department's fee schedule. Reimbursement is not provided for such services unless prior authorization has been given by the designated review organization.
- (4) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services as defined by the Board of Dentistry.
- (5) Covered services for adults age 21 and over include:
  - (a) diagnostic;
  - (b) preventative;
  - (c) basic restorative services including prefabricated crown;
  - (d) extractions; and
  - (e) porcelain fused to base metal crowns, and porcelain/ceramic crowns are limited to two per person per year, total.
- (6) Medically necessary dental services outlined in (5)(c) through (e), excluding anesthesia services, have an annual limit. ~~are subject to an annual limit of \$1,125 per benefit year. A benefit year begins on July 1st and ends the following June 30th. The limit is applied per benefit year, which runs from July 1 through June 30.~~ Members determined categorically eligible for Aged, Blind, and Disabled (ABD) Medicaid, in accordance with ARM 37.82.204, are not subject to the annual limit. The annual limit is:
  - (a) \$1,125 for dates of service June 30, 2024, and earlier;
  - (b) \$1,170 for the benefit year starting July 1, 2024, and ending on June 30, 2025;  
and
  - (c) \$1,205 for the benefit year starting July 1, 2025, and ending on June 30, 2026.
- (7) Full maxillary and full mandibular dentures are a Medicaid-covered service. Coverage is limited to one set of dentures every ten years. Only one lifetime exception to the ten-year time period is allowed per person if one of the following exceptions is authorized by the department:

- (a) The dentures are no longer serviceable and cannot be relined or rebased; or
  - (b) The dentures are lost, stolen, or damaged beyond repair.
- (8) Maxillary partial dentures and mandibular partial dentures are a Medicaid-covered service. Coverage is limited to one set of partial dentures every five years. Only one lifetime exception to the five-year limit is allowed per person if one of the following exceptions is authorized by the department:
  - (a) The partial dentures are no longer serviceable and can no longer be relined or rebased; or
  - (b) The partial dentures are lost, stolen, or damaged beyond repair.
- (9) The limits on coverage of denture replacement may be exceeded when the department determines that the existing dentures are causing the person serious physical health problems. The dentist or denturist should indicate "replacement dentures" on the request for prior authorization of replacement dentures and document the medical necessity for the replacement.
- (10) Coverage of all denture services is subject to the following requirements and limitations:
  - (a) A denturist may provide initial immediate full prosthesis and initial immediate partial prosthesis only when prescribed in writing by a dentist. The prescription must be signed and dated within 90 days of the order and must be maintained in the patient file.
  - (b) Requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis.
- (11) Orthodontia for persons age 21 and older who have maxillofacial anomalies that must be corrected surgically and for which the orthodontia is a necessary adjunct to the surgery is a covered service.
- (12) Full band comprehensive orthodontic or interceptive orthodontic treatment for persons 20 and younger who have one of the following handicapping conditions, indicated with an 'X' on the HLD score sheet:
  - (a) cleft palate;
  - (b) deep impinging overbite;
  - (c) anterior impaction; or
  - (d) who score a 30 or higher without a handicapping condition (as listed above) on the Handicapping Labio-Lingual Form (HLD Index).
- (13) Unless otherwise provided by these rules, interceptive orthodontia is limited to children 12 years of age or younger with one or more of the following conditions:

- (a) posterior unilateral crossbite;
  - (b) bilateral crossbite; or
  - (c) anterior crossbite.
- (14) All orthodontia treatment plans must receive prior authorization from the department's designated peer reviewer to determine individual eligibility for such orthodontia services.
  - (15) Orthodontic treatment not progressing to the extent of the treatment plan because of noncompliance by the person and which jeopardizes the health of the person may result in termination of orthodontic treatment. If termination of orthodontic treatment occurs because of noncompliance by the person, Medicaid will not authorize any future orthodontic requests for that person.
  - (16) Cosmetic dentistry is not a covered service of the Medicaid program.
  - (17) Dental implants are not a covered benefit of the Medicaid program.
  - (18) Nobel metal crowns, and bridges are not covered benefits of the Medicaid program for individuals age 21 and over.

**Authorizing statute(s):** 53-2-201, 53-6-113, MCA

**Implementing statute(s):** 53-6-101, 53-6-113, MCA

### **37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT**

- (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, dated July 1, ~~2024~~ 2025.
- (2) The department adopts and incorporates by this reference the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, dated July 1, ~~2024~~ 2025. The manual is posted at <https://dphhs.mt.gov/bhdd/disabilityservices/developmentaldisabilities/ddpratesin>



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<https://dphhs.mt.gov/BHDD/DisabilityServices/developmentaldisabilities/ddpratesinf>.

**Authorizing statute(s):** 53-6-113, MCA

**Implementing statute(s):** 53-6-101, MCA

### **37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS**

- (1) Mental health services for a Medicaid adult under the Montana Medicaid program will be reimbursed only if the client is 18 or more years of age and has been determined to have a severe disabling mental illness.
- (2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2024~~ July 1, 2025, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at:  
<https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.
- (3) Medicaid reimbursement for mental health services will be the lowest of:
  - (a) the provider's actual (submitted) charge for the service; or
  - (b) the rate established in the department's fee schedule. Reimbursement fees are as provided in ARM 37.85.105 and 37.85.106.
- (4) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or otherwise not in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.
- (5) The department or its designee may require providers to report outcome data or measures regarding mental health services, as determined in consultation with providers and consumers.

**Authorizing statute(s):** 53-2-201, 53-6-113, MCA

**Implementing statute(s):** 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

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### **General Reasonable Necessity Statement**

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.27.902, 37.85.104, 37.85.105, 37.85.106, 37.85.206, 37.86.1006, 37.86.3607, and 37.88.101 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates, and updating the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health. The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement. In establishing the proposed rates, the department considered as primary factors the availability of funds appropriated by the Montana Legislature during the 2025 regular legislative session, the actual cost of services, and the availability of services.

Proposed changes to provider rates that are the subject of this rule notice, including rates in fee schedules and rates in provider manuals, can be found at <https://medicaidprovider.mt.gov/proposedfs>.

The following sections explain proposed amendments to the following rules: ARM 37.27.902, 37.85.104, 37.85.105, 37.85.106, 37.85.206, 37.86.1006, 37.86.3607, and 37.88.101.

#### ARM 37.85.104

(1)(a), (c), and (d) Behavioral Health and Developmental Disabilities Division Fee Schedules – July 1, 2025

The department is proposing to adopt the July 1, 2025, updates, for the following non-Medicaid fee schedules: mental health crisis services for adults, youth respite care services, and substance use disorder services. This is necessary to update provider rates and mirror those rates found on the Medicaid fee schedules.

#### ARM 37.85.105

## (2)(a) and (b) Resource-Based Relative Value Scale (RBRVS) Federal Register

Effective July 1, 2025, the department is proposing to adopt the version of the RBRVS contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare & Medicaid Services (CMS) in the December 9, 2024, federal register (effective January 1, 2025) for the RBRVS reimbursement methodology. This adoption is necessary to incorporate the most up-to-date changes made by CMS.

### (2)(b) RBRVS Conversion Factors (CF)

RBRVS rates are calculated by multiplying code-specific relative value units (RVU) by the applicable conversion factor. During the annual RBRVS reimbursement modeling process, the department considers all these factors in the aggregate using a weighted average based on utilization. The 2025 legislature appropriated funds for a provider rate increase of 3.0% for the state fiscal year 2026. Considering the pricing factors and the appropriated provider rate increase, the department proposes increases to the allied services and mental health services conversion factors. The proposed allied services conversion factor is \$28.23, and the proposed mental health services conversion factor is \$22.24. When the proposed conversion factor increases are applied against utilization and RVUs, the result is a weighted average rate increase of 3%.

For the physician services and anesthesia conversion factor, the department is directed by 53-6-125, MCA, to increase the conversion factor by the consumer price index for medical care for the previous year, which for this adjustment period is 3.3%. Physician services are not included in the 2025 legislature appropriated provider rate increase.

### (2)(e) Payment to Charge Ratio

The payment to charge ratio, which is used to price some allowable procedures which do not have set reimbursement, is proposed to be 47.42%, effective July 1, 2025. This ratio is updated annually as part of the department's annual RBRVS updates and will change when there are changes in the average provider charges and/or changes to reimbursement.

### (2)(i) Optometric Services Provider Rate of Reimbursement (PRR)

The department is proposing to change the optometric services PRR, which is a pricing factor, to 114.53% of the reimbursement for allied services with an effective date of July 1, 2025.

When this pricing factor is applied against utilization, relative value units, and proposed allied services conversion factor, optometrists and opticians will have no change in their weighted average provider rate.

### (3)(a) Inpatient Hospital Services Rates

The department proposes a 3% increase to inpatient hospital reimbursement, effective July 1, 2025. The department proposes to adopt Version 42.0 of the 3M APR-DRG grouper, effective July 1, 2025. This grouper update includes changes to DRG relative weights, average lengths of stays, and adds or deletes some DRGs.

### (3)(b)(ii) Outpatient Prospective Payment System (OPPS) Conversion Factor

The department is proposing to increase the OPPS conversion factor to \$62.54, effective July 1, 2025, to effectuate the legislatively approved provider rate increase.

(3)(b)(iv) Outpatient Maintenance Dialysis Clinic

The bundled composite rate for outpatient maintenance dialysis clinics is proposed to increase by 3% to \$290.32, effective July 1, 2025, to incorporate the provider rate increase approved by the Montana Legislature.

(3)(c), (j), (l), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), and (aa) Fee Schedules

The department is proposing the adoption of fee schedules effective July 1, 2025. The fee schedules incorporate changes due to the proposed amendments within this rule notice, including federal register changes, conversion factor updates, legislatively required provider rate increases. The above-listed subsections are for the following fee schedules -- hearing aid services; home infusion therapy services; nutrition services; orientation and mobility specialist services; transportation and per diem fee schedule; specialized non-emergency medical transportation; ambulance services; audiology services; occupational, physical, and speech therapy services; optometric services; Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) chiropractic services; lab and imaging services; Targeted Case Management (TCM) for Children and Youth with Special Health Care Needs; TCM for High-Risk Pregnant Women; mobile imaging services; licensed direct-entry midwife; and private duty nursing.

(3)(d) Dental Reimbursement

The department proposes three changes to this subsection: 1) adoption of the Relative Values for Dentist reference published in 2025; 2) modification of the dental conversion factor to \$39.52; and 3) adoption of the July 1, 2025, Dental Services fee schedules. These proposed changes are necessary to incorporate the legislatively approved provider rate increase and to keep current with updated dental procedure codes.

(3)(e) Dental Provider Manual Update

The Dental Provider manual is proposed to be amended, effective July 1, 2025, to incorporate the information from provider notices. Provider notices are archived after a few years; therefore, pertinent information should be incorporated into the manual.

(3)(f) Outpatient Drugs Minimum Dispensing Fee

Annually the department surveys enrolled pharmacies to establish the state fiscal year minimum dispensing fee. The results from the annual survey provide the data necessary to calculate the minimum dispensing fee, which is proposed to be \$4.11.

(3)(f) Outpatient Drugs Maximum Dispensing Fees

The department proposes to increase the maximum dispensing fee, for each volume range, to incorporate the legislatively approved provider rate increase.

(3)(h) Outpatient Drugs Reimbursement Vaccine Administration Fee

The department proposes to increase the fee paid for each additional vaccine administered to \$16.04. This change is necessary to maintain a vaccine administration fee aligned with the physician services rate.

(3)(k) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies

The department proposes to adopt and incorporate by reference the Medicare Region D Supplier Manual effective July 1, 2025. This proposal is necessary to ensure the department adopts newly added, revised, or deleted Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs).

Effective July 1, 2025, the fee schedule will incorporate the July 2025 Medicare DMEPOS fee schedule changes and updates to fees set by the department. The department proposes a 3.0% increase to the fees set by the department on the DMEPOS fee schedule.

(4) Senior and Long-Term Care Division

The department proposes the adoption of updated fee schedules, effective July 1, 2025. The updated fee schedules implement legislatively appropriated Medicaid provider-rate increases for Community First Choice Services, Personal Care Services (CFCS/PCS), Big Sky Waiver (BSW), and Home Health programs.

(5)(a) Behavioral Health and Developmental Disabilities Division Mental Health Center Services Adult Fee Schedule

The department proposes the adoption of updated fee schedules effective July 1, 2025. The fee schedules implement legislatively appropriated Medicaid provider rate increases.

(5)(a), (b), and (c) Behavioral Health and Developmental Disabilities Division Fee Schedules

The department is proposing to amend the effective date to July 1, 2025, for the following fee schedules: mental health center services for adults, home and community-based services for adults with severe disabling mental illness, and substance use disorder services. This is necessary to update provider rates in accordance with funding appropriated by the Montana Legislature during the 2025 regular session.

(6) Behavioral Health and Developmental Disabilities Division Medicaid Youth Mental Health Services Fee Schedule

The department proposes to revise the effective dates and reimbursements on the Medicaid youth mental health services fee schedule to July 1, 2025. This update incorporates the legislatively approved provider rate increase.

ARM 37.85.106

(2) Fee schedule

The department is proposing to amend ARM 37.85.106 to update the fee schedule date for the Medicaid Behavioral Health Targeted Case Management Fee Schedule to July 1, 2025. This is

necessary to update provider rates in accordance with funding appropriated by the Montana Legislature during the 2025 regular session.

#### ARM 37.85.206

##### (3)(b) Reference to the Adult Dental Treatment Services Limit

The department proposes to amend this rule to replace the existing dollar value reference for the adult dental treatment services limit with a reference to ARM 37.86.1006. The objective of this subsection is to establish that members categorically eligible for Medicaid as aged, blind, or disabled are exempt from the dental treatment services limit, and a dollar value does not affect this exemption.

#### ARM 37.86.1006

##### (6) Adult Dental Treatment Services Limit

The department proposes to increase the adult dental treatment services limit by 4% for SFY 2025 and 3% for SFY 2026. These updates match the legislatively appropriated provider rate increases for SFY 2025 and 2026. Increasing the adult dental treatment services limit is necessary to prevent a reduction in the level of dental treatment services adult members can obtain when provider rates are increased.

#### ARM 37.86.3607

##### (1) and (2) Reimbursement

The department is proposing to amend ARM 37.86.3607 pertaining to reimbursement rates in the Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915 (c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and over.

The rule amendment would adopt and incorporate an updated version of the manual dated July 1, 2025, to incorporate the legislatively approved provider rate increase. The rule amendment would also update the weblink to the Targeted Case Management manual.

ARM 37.27.902 Substance Use Disorder Services: Authorization Requirements and ARM 37.88.101 Medicaid Mental Health Services for Adults, Authorization.

The department is proposing to amend the effective date to July 1, 2025, for the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health. This is necessary to ensure that the manual includes new and updated policies and service requirements for the implementation of Contingency Management, which is included in the Healing and Ending Addiction through Recovery and Treatment waiver. This consists of the following amendments to the BHDD Medicaid Manual:

Amend Policy 505 – Specimen Collection to align with new program roles and responsibilities.

- Add medical necessity criteria and service requirements for specimen collection specific to Contingency Management services.

#### Add new BHDD Policy 610 Contingency Management

- Define the service
- Identify eligibility requirements and medical necessity criteria
- Define standards for eligible Contingency management providers

Define service requirements

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#### Fiscal Impact

The following table displays the number of providers affected by the amended fee schedules, effective dates, conversion factors, and rates for services for SFY 2026 based on the proposed amendments.

| Provider Type                                                       | SFY 2026 Budget Impact (Federal Funds) | SFY 2026 Budget Impact (State Funds) | SFY 2026 Budget Impact (Total Funds) | Active Provider Count |
|---------------------------------------------------------------------|----------------------------------------|--------------------------------------|--------------------------------------|-----------------------|
| Ambulance                                                           | \$233,710                              | \$145,637                            | \$379,347                            | 251                   |
| Audiologist                                                         | \$3,981                                | \$2,480                              | \$6,461                              | 107                   |
| BCBA/BCBA-D                                                         | \$73,908                               | \$46,055                             | \$119,963                            | 77                    |
| Case Management Services for people with developmental disabilities | \$63,685                               | \$39,685                             | \$103,371                            | 2                     |
| Chemical Dependency Clinic                                          | \$253,929                              | \$158,236                            | \$412,165                            | 75                    |
| Commercial and Personal Transportation                              | \$74,967                               | \$46,716                             | \$121,683                            | 11                    |
| Community First Choice                                              | \$1,246,080                            | \$776,495                            | \$2,022,574                          | 61                    |
| CSCT Children's Mental Health                                       | \$151,147                              | \$94,187                             | \$245,334                            | 359                   |
| Crisis Diversion                                                    | \$88,573                               | \$55,194                             | \$143,768                            | 7                     |
| Dental                                                              | \$1,275,678                            | \$794,939                            | \$2,070,616                          | 774                   |
| Denturist                                                           | \$52,331                               | \$32,610                             | \$84,942                             | 25                    |
| Dialysis Clinic                                                     | \$60,526                               | \$37,717                             | \$98,243                             | 26                    |
| Durable Medical Equipment                                           | \$56,540                               | \$35,233                             | \$91,772                             | 479                   |

|                                         |             |             |             |       |
|-----------------------------------------|-------------|-------------|-------------|-------|
| EPSDT - Chiropractic                    | \$12,253    | \$7,635     | \$19,889    | 169   |
| Free Standing Birthing Center           | \$339       | \$211       | \$550       | 2     |
| Hearing Aid Dispenser                   | \$3,536     | \$2,203     | \$5,739     | 39    |
| HEART Waiver                            | \$560,630   | \$349,356   | \$909,986   | 7     |
| HCBS - Big Sky Waiver                   | \$1,317,301 | \$820,876   | \$2,138,177 | 278   |
| HCBS - SDMI Waiver                      | \$547,918   | \$341,435   | \$889,353   | 144   |
| Home Health Agency                      | \$8,044     | \$5,013     | \$13,057    | 34    |
| Home Infusion Therapy                   | \$39,493    | \$24,610    | \$64,104    | 13    |
| Hospital – Inpatient                    | \$3,177,183 | \$1,979,861 | \$5,157,044 | 596   |
| Hospital - Outpatient                   | \$2,278,610 | \$1,419,916 | \$3,698,526 | 596   |
| Independent Diagnostic Testing Facility | \$17,497    | \$10,904    | \$28,401    | 29    |
| Laboratory                              | \$6,148     | \$3,831     | \$9,979     | 273   |
| Licensed Addiction Counselor            | \$13,169    | \$8,207     | \$21,376    | 224   |
| Licensed Clinical Social Worker         | \$333,031   | \$207,528   | \$540,560   | 1,239 |
| Licensed Marriage and Family Therapist  | \$2,638     | \$1,644     | \$4,282     | 22    |
| Licensed Professional Counselor         | \$504,859   | \$314,603   | \$819,462   | 1,464 |
| Mental Health Center                    | \$599,628   | \$373,658   | \$973,287   | 61    |
| Mid-Level Practitioner                  | \$1,759,597 | \$1,096,493 | \$2,856,090 | 7,493 |
| Mobile Imaging Service                  | \$3,624     | \$2,259     | \$5,883     | 2     |
| Nutritionist/ Dietitian                 | \$3,574     | \$2,227     | \$5,801     | 180   |
| Occupational                            | \$120,128   | \$74,858    | \$194,985   | 468   |



|                                                                              |             |             |             |        |
|------------------------------------------------------------------------------|-------------|-------------|-------------|--------|
| Therapist                                                                    |             |             |             |        |
| Optician                                                                     | \$2,103     | \$1,311     | \$3,414     | 24     |
| Optometrist                                                                  | \$138,450   | \$86,275    | \$224,725   | 283    |
| Personal Care Agency                                                         | \$11,381    | \$7,092     | \$18,473    | 79     |
| Personal Care Agency - Adult MH                                              | \$592       | \$369       | \$962       | 49     |
| Personal Care Agency - Child MH                                              | \$2,893     | \$1,803     | \$4,696     | 19     |
| Pharmacy Dispensing Fee                                                      | \$373,233   | \$232,580   | \$605,814   | 465    |
| Physical Therapist                                                           | \$179,396   | \$111,791   | \$291,186   | 1,303  |
| Physician                                                                    | \$3,461,385 | \$2,156,962 | \$5,618,347 | 16,573 |
| Podiatrist                                                                   | \$61,338    | \$38,223    | \$99,561    | 91     |
| Private Duty Nursing Agency                                                  | \$75,075    | \$46,783    | \$121,858   | 10     |
| Psychiatric Res Treatment Facility                                           | \$446,469   | \$278,217   | \$724,686   | 29     |
| Psychiatrist                                                                 | \$139,053   | \$86,651    | \$225,704   | 404    |
| Psychologist                                                                 | \$21,486    | \$13,389    | \$34,875    | 327    |
| Public Health Clinic                                                         | \$10,872    | \$6,775     | \$17,647    | 43     |
| School Based Services - Non-CSCT                                             | \$110,747   | \$69,012    | \$179,759   | 90     |
| Specialized Transportation                                                   | \$313       | \$195       | \$509       | 14     |
| Speech Pathologist                                                           | \$80,798    | \$50,349    | \$131,147   | 417    |
| Targeted Case Management - Children and Youth with Special Health Care Needs | \$666       | \$415       | \$1,082     | 5      |
| Targeted Case Management - High Risk Pregnant                                | \$26        | \$16        | \$42        | 2      |

|                                          |           |           |           |    |
|------------------------------------------|-----------|-----------|-----------|----|
| Women                                    |           |           |           |    |
| Targeted Case Management - Mental Health | \$193,302 | \$120,456 | \$313,758 | 35 |
| Therapeutic Family Care                  | \$394,355 | \$245,743 | \$640,098 | 22 |
| Therapeutic Group Home                   | \$244,655 | \$152,457 | \$397,112 | 41 |

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### Effective Date

The department intends to apply these rule amendments retroactively to July 1, 2025.

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### Small Business Impact

Provider rate increases will benefit Medicaid providers that are small businesses by adjusting reimbursement rates to account for inflation and supporting financial stability. Higher reimbursement rates will make it more viable for providers to accept Medicaid members, expanding access to care. This increased revenue will also allow small businesses to invest in staff and technology, ultimately leading to better quality of care and fostering growth. The exact benefit for each small business is dependent on the Medicaid services they provide and the percentage of their clients that are covered by Medicaid.

Otherwise, with regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

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### Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

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### Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact information listed above.

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**Medicaid Performance Based Statement**

Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

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**Rule Reviewer**

Bree Gee

**Approval**

Charles T. Brereton, Director

Department of Public Health and Human Services



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**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-156.1**

**Summary**

Amendment of ARM 37.12.401 and 37.57.301 pertaining to newborn screening

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**Hearing Date and Time**

Thursday, October 30, 2025, at 9:00 a.m.

**Virtual Hearing Information**

Join Zoom Meeting: <https://mt-gov.zoom.us/j/88049735078?pwd=vdOpbY4XkyZO3b12bGibaRXiRQjFQj.1>

Meeting ID: 880 4973 5078 and Password: 676305

Dial by Telephone: +1 646 558 8656

Meeting ID: 880 4973 5078 and Password: 676305

Find your local number: <https://mt-gov.zoom.us/j/88049735078?pwd=vdOpbY4XkyZO3b12bGibaRXiRQjFQj.1>

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 16, 2025, at 5:00 p.m.

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## Contact

Bailey Yuhas  
(406) 329-7913  
hhsadminrules@mt.gov  
Fax: (406) 444-9744

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 37.12.401 LABORATORY FEES FOR ANALYSES

- (1) Fees for clinical and environmental analyses performed by the laboratory of the department are set to reflect the actual costs of the tests and services provided.
- (2) The department will maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Public Health Laboratory Testing Fee Schedule and the Environmental Laboratory Testing Fee Schedule effective ~~June 1, 2024~~ January 1, 2026, which is available on the web site of the Department of Public Health and Human Services at <https://dphhs.mt.gov/publichealth/LaboratoryServices/index>, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.
- (3) The fee for a specific lab test will be lowered by the department to a level not exceeding the cost to the department of the test in question whenever a change of analysis method warrants lower fees.
- (4) Fees for analyses other than those listed will be established at the level of comparable analyses.

**Authorizing statute(s):** 50-1-202, MCA

### **37.57.301 DEFINITIONS**

As used in this subchapter, the following definitions apply:

- (1) "Health care facility" means a hospital or other facility licensed by or located in the state of Montana for the purpose of providing health care services, and which provides primary health care services for newborns at birth.
- (2) "Newborn" means an infant in the first 28 days of life.
- (3) "Newborn screening tests" are screening tests, procedures, or both for the following conditions:
  - (a) Acylcarnitine Disorders:
    - (i) Fatty Acid Oxidation Disorders:
      - (A) Carnitine uptake defect;
      - (B) Long-chain L-3-OH acyl-CoA dehydrogenase deficiency;
      - (C) Medium-chain acyl-CoA dehydrogenase deficiency;
      - (D) Trifunctional protein deficiency; and
      - (E) Very long-chain acyl-CoA dehydrogenase deficiency;
    - (ii) Organic Acidemia Disorders:
      - (A) 3-hydroxy-3-methylglutaryl-CoA lyase deficiency;
      - (B) 3-Methylcrotonyl-CoA carboxylase deficiency;
      - (C)  $\beta$ -ketothiolase deficiency;
      - (D) Glutaric acidemia type I;
      - (E) Isovaleric acidemia;
      - (F) Methylmalonic acidemia (Cbl A,B);
      - (G) Methylmalonic acidemia (mutase deficiency);
      - (H) Multiple carboxylase deficiency; and
      - (I) Propionic acidemia;
  - (b) Amino Acid Disorders:
    - (i) Argininosuccinic acidemia;

- (ii) Citrullinemia type 1;
  - (iii) Homocystinuria;
  - (iv) Maple syrup urine disease;
  - (v) Classic Phenylketonuria; and
  - (vi) Tyrosinemia type I;
- (c) Biotinidase deficiency;
- (d) Classical galactosemia;
- (e) Congenital adrenal hyperplasia;
- (f) Primary congenital hypothyroidism;
- (g) Cystic fibrosis;
- (h) Hemoglobinopathies, including:
  - (i) Hb S/ $\beta$  -thalassemia;
  - (ii) Hb SC disease; and
  - (iii) Hb SS disease; and
- (i) Critical congenital heart disease, including:
  - (i) hypoplastic left heart syndrome;
  - (ii) pulmonary atresia;
  - (iii) tetralogy of Fallot;
  - (iv) total anomalous pulmonary venous return;
  - (v) transposition of the great arteries;
  - (vi) tricuspid atresia;
  - (vii) truncus arteriosus;
- (j) Severe combined immunodeficiency disease;
- (k) Spinal muscular atrophy (SMA); ~~and~~
- (l) X-linked adrenoleukodystrophy (X-ALD); and
- (m) Pompe disease.

**Authorizing statute(s):** 50-19-202, MCA

### **General Reasonable Necessity Statement**

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.12.401 and 37.57.301 regarding newborn screening and the fees charged for such screening panel tests by the department's public health laboratory. The proposed rule amendments add Pompe disease to the required Montana newborn screening testing panel.

#### **ARM 37.12.401 LABORATORY FEES FOR ANALYSES**

The department is proposing to amend this rule to adopt and incorporate by reference an updated laboratory test fee list that takes into account the addition of Pompe disease to the newborn screening tests. A copy of the proposed laboratory fee schedule is electronically accessible at: <https://dphhs.mt.gov/publichealth/LaboratoryServices/PublicHealthLabTesting>. The fee for newborn screening panel tests is currently \$150.50. The department is proposing to increase the fee to \$161.80 due to the addition of the Pompe disease test. The proposed rule change is necessary to align with the changes being proposed to ARM 37.57.301.

#### **ARM 37.57.301 DEFINITIONS**

The department is proposing to amend the definition of the term "newborn screening tests" by adding Pompe disease to the list of required newborn screening panel tests in accordance with the recommendation of the Newborn Screening Advisory Committee made on August 28, 2024. In making its recommendation, the committee relied upon federally recognized standards for newborn screening, including the Recommended Uniform Screening Panel (RUSP) developed by the Health Resources and Services Administration (HRSA) of the United States Department of Health and Human Services.

Pompe disease is a type of glycogen storage disease, a genetic condition in which a complex sugar called glycogen builds up in the body's cells. The disease results from the deficiency of a digestive enzyme called acid alpha-glucosidase (GAA). The deficiency of this enzyme leads to an abnormal buildup of glycogen in the lysosomes of cells, resulting in severe muscle weakness, especially in the heart and skeletal muscles. In the United States, Pompe disease affects about 1 in every 40,000 individuals. Without early detection and treatment, the condition is fatal at 1 to 2 years of age.

The proposed rule change is necessary to conform with HRSA's RUSP for all newborns and to update newborn screening to reflect current standards of care for babies born in Montana.

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## **Fiscal Impact**

The proposed rule changes affect newborns and their families, birthing hospitals, birthing centers, and small businesses providing direct-entry midwifery services. There are approximately 12,000 babies born in Montana every year. The cost for the addition of the Pompe disease test to the newborn screening panel is \$11.30 per test. Given the modest cost of this test, the department does not anticipate these proposed rule changes will have a significant fiscal impact.

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## **Small Business Impact**

Pursuant to 2-4-111, MCA, the class of small businesses anticipated to be affected by the proposed rules are those providing birthing care. These affected small businesses primarily consist of those providing midwifery services. The probable significant and direct effect of these proposed rules on these small businesses is the increase in cost of \$11.30 for the required newborn screening panel test. Documentation of the small business impact analysis is available upon request.

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## **Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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## **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be emailed, mailed or otherwise delivered to the contact person above.

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## **Effective Date**

The department intends for the proposed rule amendments to be effective January 1, 2026.

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## **Rule Reviewer**

Robert Lishman

**Approval**

Charles T. Brereton, Director

Department of Public Health and Human Services



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**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-176.1**

**Summary**

Amendment of ARM 37.8.302 pertaining to Electronic Parental Review of Birth Certificate Information

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**Hearing Date and Time**

Thursday, October 30, 2025, at 11:00 a.m.

**Virtual Hearing Information**

Join Zoom Meeting: <https://mt-gov.zoom.us/j/81296185529?pwd=EkgIho5OzB8UbBwmJpGHIwGelgsgBT.1>

Meeting ID: 812 9618 5529 and Password: 458395

Dial by Telephone +1 646 558 8656

Meeting ID: 812 9618 5529 and Password: 458395

Find your local number: <https://mt-gov.zoom.us/j/81296185529?pwd=EkgIho5OzB8UbBwmJpGHIwGelgsgBT.1>

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 16, 2025, at 5:00 p.m.

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## Contact

Bailey Yuhas  
406-329-7913  
hhsadminrules@mt.gov  
Fax: (406) 444-9744

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## Rulemaking Actions

### AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

### 37.8.302 PARENTAL REVIEW OF BIRTH CERTIFICATE INFORMATION

- (1) Before a mother who recently gave birth in or en route to a health care facility leaves the facility in which the birth occurred, the health care facility administrator or the administrator's authorized designee shall present a completed birth certificate to a parent of the child so they may verify the information contained in the birth certificate. When the parent agrees that the information is correct, the certificate will be entered into the electronic birth registration system by the administrator's authorized designee or preparer. ~~the parent shall sign the certificate after the words~~ A checkbox is present in the online system that must be checked by the preparer if the parent has agreed the information presented to them is correct. The checkbox reads, "I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief." If the information is not correct, the birth certificate must be redone with the correct information and presented again to the parent. ~~for signature.~~
- (2) A parent's informational copy (not a certified copy) of the birth certificate must be given to the parent at the time he or she reviews and approves ~~signs~~ the certificate.
- (3) If a birth occurs outside of a health care facility, the person responsible for certifying the live birth and filing the birth certificate under the provisions of 50-15-221(4), MCA, must fulfill the same duties as those specified in (1) and (2) for a health care facility administrator.

**Authorizing statute(s):** 50-15-102, MCA

**Implementing statute(s):** 50-15-102, 50-15-103, 50-15-108, 50-15-109, 50-15-221, MCA

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### **General Reasonable Necessity Statement**

The Department of Public Health and Human Services (department) proposes to amend ARM 37.8.302 to modernize the parental review process for birth certificates. This amendment is necessary because the department now requires birth certificates to be submitted through an electronic registration system (per ARM 37.8.104) and no longer accepts paper copies of birth certificates.

The proposed change will replace the outdated parental signature requirement with a checkbox. The birth certificate preparer will be required to check the box, verifying that a parent has reviewed the information for accuracy. This update aligns the parental review process with the department's electronic registration system.

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### **Small Business Impact**

Pursuant to 2-4-111, MCA, the agency has determined there is no class or group of small businesses affected by the proposed rule amendment and that the proposed rule amendment will not have a significant and direct effect upon small businesses.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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### **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be emailed, mailed or otherwise delivered to the contact person above.

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**Rule Reviewer**

Robert Lishman

**Approval**

Charles T. Brereton, Director

Department of Public Health and Human Services



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DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-527.1

**Summary**

Amendment of ARM 37.71.601 and 37.71.602 pertaining to Low Income Weatherization Assistance Program (LIWAP)

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**Hearing Date and Time**

Thursday, October 30, 2025, at 1:00 p.m.

**Virtual Hearing Information**

Join Zoom Meeting

<https://mt-gov.zoom.us/j/81387652361?pwd=Px7yfCRg8zsdcnlyMdHAAaUqCgEsxf.1>

Meeting ID: 813 8765 2361 and Password: 012810

Dial by Telephone +1 646 558 8656

Meeting ID: 813 8765 2361 and Password: 012810

Find your local number: <https://mt-gov.zoom.us/j/kcZJtE0BgY>

**Comments**

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may be submitted using the contact information below. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, October 16, 2025, at 5:00 p.m.

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## Contact

Bailey Yuhas  
(406) 329-7913  
hhsadminrules@mt.gov  
Fax: (406) 444-9744

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 37.71.601 ELIGIBILITY FOR WEATHERIZATION SERVICE: PRIORITIES

- (1) Except as provided in (1)(a), a dwelling is not eligible for weatherization services funded with U.S. Department of Energy (DOE) funds if the dwelling has been weatherized within the fifteen years following the date of the previous weatherization completion.
  - (a) Regardless of the time limitations imposed in (1), DOE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.
- (2) Except as provided in (2)(a), a dwelling is not eligible for weatherization services funded with NorthWestern Energy free weatherization (NWE) funds if the dwelling has been weatherized within the ~~ten~~ five years following the date of the previous weatherization completion.
  - (a) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.
- (3) Except as provided in (3)(a), a dwelling is not eligible for weatherization services funded with LIHEAP weatherization funds if the dwelling has been weatherized



within the ~~ten~~ five years following the date of the previous weatherization completion.

- (a) Regardless of the time limitations imposed in (3), LIHEAP funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.
- (4) Community residential facilities as defined at 76-2-411, MCA, that are the residence for low income elderly individuals or individuals with a disability are eligible for weatherization services.
- (5) In determining which eligible households will receive weatherization services, local agencies may prioritize households as follows: and in what order, households in each of the governor's substate planning districts will be ranked by priority according to the following:
  - (a) ~~The highest priority is given to households with the highest energy burden.~~ The highest priority is given to a household that has a primary heating source or primary water heater emergency. Emergency must be documented in the client file.
  - (b) Local agencies may then prioritize households with:
    - (i) ~~When calculating the energy burden of households containing any of the following, the energy usage shall be multiplied by 1.25:~~
      - ~~(A)(i)~~ an elderly household member (60 years of age or older);
      - ~~(B)(ii)~~ a disabled household member with a disability; or
      - ~~(C)(iii)~~ a household member who is a child.
    - (b)(c) ~~Households with the same energy burden are prioritized by highest usage.~~ Local agencies may give higher priority for weatherization services to households meeting two or more of the priority criteria listed in (b)(i) through (iii) than those households with just one.
- (6) If there exists a weatherization-related imminent threat to the health or safety of an eligible household, the home may be given a higher priority than described in (5). It is the obligation of the household to provide proof of an imminent threat to the health or safety of the household to the local contractor. The local contractor must request that the department give the household's dwelling a higher priority.
- (7) Weatherization will be scheduled to minimize travel and other nonproductive costs.
  - (a) If nonproductive costs are excessive, the scheduled home may be delayed for weatherization, but in no instance will the scheduled home be delayed longer than one year or the end of the contract period whichever comes first.

- (8) Eligible homes scheduled to receive partial weatherization from any other agency may be prioritized higher to allow coordination and avoid duplication of weatherization services.
- (9) If at least 66% of units in a multi-unit building, or 50% for duplexes and four-unit buildings, are eligible for weatherization, and one of the units is prioritized high enough to be scheduled for service, all of the units in the building, including units that are not eligible for weatherization, will be weatherized to avoid nonproductive costs.
- (10) When a dwelling is prioritized high enough to be scheduled for weatherization work, the delivery of services will be deferred until a later date if providing the services would pose a threat to the health or safety of either the weatherization installers or any other person. In such cases, the delivery of services will be postponed until the conditions that pose a threat to health or safety have been resolved. The department adopts and incorporates by reference the department's ~~2022~~ 2025 Weatherization Policy Manual effective July 1 ~~2025~~ 2022, which outlines the circumstances that justify a deferral of weatherization services. The Weatherization Policy Manual is located at the department's web site at <http://dphhs.mt.gov/hcsd/energyassistance/> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, ~~Intergovernmental Human Services Bureau~~, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956.

**Authorizing statute(s):** 53-2-201, 90-4-201, MCA

**Implementing statute(s):** 53-2-201, 90-4-201, 90-4-202, MCA

### **37.71.602 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE**

- (1) Weatherization assistance is available to eligible households in accordance with the prioritized measures as determined by the State's Computerized Energy Audit (CEA) system.
- (2) Dwellings chosen to be weatherized must receive those measures determined to be cost effective as defined in 10 CFR 440, effective July 1, 2025. ~~as amended through July 1, 2022~~. The department adopts and incorporates by reference 10 CFR 440, effective July 1, 2025. ~~as amended through July 1, 2022~~. A copy of these federal regulations is available at <https://www.ecfr.gov/current/title-10/chapter-II/subchapter-D/part-440> or may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, ~~Intergovernmental~~

~~Human Services Division~~, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956.

- (3) The department adopts and incorporates by reference the department's ~~2022~~ 2025 Weatherization Policy Manual and National Renewable Energy Laboratory (NREL) Standard Work Specifications effective July 1, 2022. The Weatherization Policy Manual is located at the department's web site at <http://dphhs.mt.gov/hcsd/energyassistance> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, ~~Intergovernmental Human Services Bureau~~, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620. The NREL Standard Work Specifications are located at the NREL web site at <https://sws.nrel.gov/>.

**Authorizing statute(s):** 53-2-201, 90-4-201, MCA

**Implementing statute(s):** 53-2-201, 90-4-201, 90-4-202, MCA

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### **General Reasonable Necessity Statement**

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.71.601 and 37.71.602 pertaining to the Low Income Weatherization Assistance Program (LIWAP).

#### ARM 37.71.601

The department is proposing to amend ARM 37.71.601 to update the number of years a dwelling must wait to be eligible for NorthWestern Energy free weatherization and LIHEAP weatherization funds. The department proposes reducing (from ten years to five years) the period in which a dwelling is eligible for weatherization services. This change is intended to provide greater energy cost savings for eligible LIHEAP households. In 2023, the federal Department of Energy (DOE) revised the lifespan of energy-saving improvements (measures). This lifespan is used when determining the savings-to-investment ratio (SIR) for energy cost-saving measures. This change resulted in more measures being eligible for installation in LIHEAP households.

The SIR is a metric used to measure the ability of technology to recover investment costs through savings achieved by reducing a customer's utility bill. The ratio divides the "savings" by the "investment"; an SIR score above 1 indicates that a household can recover the investment. Every dollar spent must be at least a dollar saved.

The change allows the department to use the March 3, 2023, WPN 23-6 Revised Energy Audit Attachments revised measure lifetimes when calculating the SIR. The older calculation method

prevented some energy cost saving measures from being installed in homes previously weatherized. The change to five years allows the department to return as appropriate to homes previously weatherized to install further energy cost saving measures that now would meet the SIR.

The department proposes the same change (from ten to five years) for work done with LIHEAP weatherization funding. This change will provide continuity when determining weatherization service eligibility, regardless of the source of weatherization funds.

Priorities are being updated to reflect the current federal regulations. The department proposes to include additional clarification for priorities. This clarification will help ensure that the most vulnerable eligible households are receiving services, while also giving subgrantees flexibility when determining which local households to weatherize.

The department proposes updating the date of the Weatherization Assistance Program Policy and Procedure Manual to July 1, 2025, as this is the policy manual the department proposes using for the 2025 program year. This is necessary to ensure that readers are reviewing the appropriate policy.

The department also proposes removing the reference to the Intergovernmental Human Services Bureau. This is not a substantive change; instead, it brings this rule into alignment with other administrative rules and simplifies the contact information for the department.

#### ARM 37.71.602

The department is proposing to amend (2) to require the use of the current version of 10 CFR, Part 440. This is necessary to ensure the most current version is utilized, and that public notice of this change is provided. The department is also proposing to amend (3) to ensure the updated Weatherization Assistance Program Policy and Procedure Manual is incorporated by reference. This is intended to provide the public with notice and an opportunity to comment on policy changes proposed by the department.

The department also proposes removing the reference to the Intergovernmental Human Services Bureau. This is not a substantive change; instead, it brings this rule into alignment with other administrative rules and simplifies the contact information for the department.

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#### **Effective Date**

The department intends to apply these rule amendments retroactively to October 1, 2024.

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## **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be emailed, mailed or otherwise delivered to the contact person above.

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## **Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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## **Small Business Impact**

Pursuant to 2-4-111, MCA, the class of small businesses probably affected by these proposed rules include HVAC, plumbing, home improvement wholesale suppliers, electricians, window distributors, and local contractors. The department has determined that the rule changes proposed in this notice will have a positive impact on small businesses. The availability of additional funding sources and the reduced time required between weatherization events will likely increase the number of homes that may be weatherized. The weatherization program supports local businesses, providing a platform for innovation in the energy retrofit industry and a market for local businesses providing workers, materials, or technical assistance.

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## **Rule Reviewer**

Heidi Sanders

## **Approval**

Charles T. Brereton, Director

Department of Public Health and Human Services



**MONTANA  
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REGISTER**



**DEPARTMENT OF REVENUE**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-227.1**

**Summary**

Adoption of NEW RULES 1 and 2 to continue implementation of House Bill 948 (HB 948) (2023), to fulfill the recommendations of the Synthetic Cannabinoid Advisory Council, and to implement the state's revised ban on synthetic cannabinoids enacted under House Bill 49 (2025)

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**Hearing Date and Time**

Wednesday, November 5, 2025, at 11:00 a.m.

**Hearing Information**

Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Wednesday, November 12, 2025, at 5:00 p.m.

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**Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 17, 2025, at 5:00 p.m.

## Contact

Todd Olson, Rule Reviewer - Department of Revenue, Legal Services Office  
(406) 444-7905  
todd.olson@mt.gov

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## General Reasonable Necessity Statement

The proposed new rules concerning synthetic cannabinoids continue the department's implementation of House Bill 948 (HB 948)(2023) and fulfill the recommendations of the Synthetic Cannabinoid Advisory Council (council) established under HB 948. The proposed new rules also implement the state's revised ban on synthetic cannabinoids under the rulemaking authority granted to the department by the legislature under HB 49 (2025)(HB 49). These new rules clarify statutory definitions, identify and prohibit specific substances, and establish enforcement procedures critical for public safety, regulatory clarity, and statutory compliance.

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## Rulemaking Actions

### ADOPT

The rules proposed to be adopted are as follows:

### NEW RULE 1 DEFINITIONS

The following definitions apply to this chapter:

- (1) "Chemical synthesis" means a process to create a chemical substance through a chemical reaction or conversion by human agency, which changes the molecular structure of any chemical substance, including but not limited to those substances derived from the plant Cannabis family Cannabaceae, that involves the use of chemicals and reagents, as opposed to those of natural origin.
  - (a) The term includes:
    - (i) the decarboxylation of synthetic acidic cannabinoids with or without the use of a chemical catalyst; and
    - (ii) the decarboxylation of natural acidic cannabinoids with the use of a chemical catalyst.
  - (b) The term does not include the decarboxylation of acidic natural cannabinoids without the use of a chemical catalyst.

- (2) “Decarboxylation” means the conversion of an acidic cannabinoid into its neutral form typically with the use of thermal energy such as the conversion of delta-9 THCA into delta-THC with heat.
- (3) “Natural cannabinoid product” means consumer products that contain natural cannabinoids and do not include synthetic cannabinoids.
- (4) “Natural cannabinoids” or “phytocannabinoids” means a cannabinoid present or occurring naturally in the biomass of the plant Cannabis family Cannabaceae. These may be separated and further purified by chemical or mechanical manufacturing, as defined in ARM 42.39.102, directly from the biomass.
  - (a) The term includes cannabinoids produced by the decarboxylation of natural acidic cannabinoids without the use of a chemical catalyst.
  - (b) The term may include:
    - (i) intoxicating or non-intoxicating cannabinoids; and
    - (ii) cannabinoids with a synthetic equivalent.
  - (c) The term does not include:
    - (i) synthetic cannabinoids or synthetically derived cannabinoids;
    - (ii) cannabinoids produced by the decarboxylation of synthetic acidic cannabinoids with or without the use of a chemical catalyst; or
    - (iii) cannabinoids produced by the decarboxylation of natural acidic cannabinoids with the use of a chemical catalyst.
- (5) “Synthetic cannabinoids” means the same as provided in 16-12-102, MCA.
  - (a) The term includes:
    - (i) cannabinoids produced by the decarboxylation of synthetic acidic cannabinoids with or without the use of a chemical catalyst; and
    - (ii) cannabinoids produced by the decarboxylation of natural acidic cannabinoids with the use of a chemical catalyst.
  - (b) The term may include:
    - (i) intoxicating or non-intoxicating cannabinoids; and
    - (ii) cannabinoids with a naturally occurring equivalent.
  - (c) The term does not include:
    - (i) natural cannabinoids; or
    - (ii) cannabinoids produced by the decarboxylation of natural acidic cannabinoids without the use of a chemical catalyst.



**Authorizing statute(s):** 16-12-112, MCA

**Implementing statute(s):** 16-12-101, 16-12-112, 16-12-117, MCA

### **Reasonable Necessity Statement**

NEW RULE 1 implements the council's recommendation to provide clear, science-based definitions for natural cannabinoids, synthetic cannabinoids, chemical synthesis, decarboxylation, and related consumer products. This ensures the department can reliably distinguish lawful from unlawful products in line with HB 948 and 16-12-117, MCA. NEW RULE 1 utilizes consensus language from the council to exclude compounds produced through chemical catalysts and ban those synthetic forms identified as presenting identifiable risks. Moreover, the definitions are designed to accommodate evolving cannabinoid chemistry, helping to prevent statutory obsolescence.

### **NEW RULE 2 SYNTHETIC CANNABINOIDS PROHIBITED**

- (1) The following cannabinoids are considered synthetic cannabinoids and any products with these cannabinoids at any appreciable levels are synthetic cannabinoid products:
  - (a) Tetrahydrocannabinol alkyl analogues C4 or higher including but not limited to the following:
    - (i) Delta-8 tetrahydrocannabiphorol (D8-THCP);
    - (ii) Delta-9 tetrahydrocannabiphorol (D9-THCP);
    - (iii) Delta-8 tetrahydrocannabioctyl (D8-THCJD);
    - (iv) Delta-9 tetrahydrocannabioctyl (D9-THCJD);
    - (v) Delta-8 tetrahydrocannabutol (D8-THCB);
    - (vi) Delta-9 tetrahydrocannabutol (D9-THCB);
    - (vii) Delta-8 tetrahydrocannabihexol (D8-THCH);
    - (viii) Delta-9 tetrahydrocannabihexol (D9-THCH);
  - (b) Delta-10 tetrahydrocannabinol (D10-THC) and isomers;
  - (c) Delta-8 tetrahydrocannabinol (D8-THC) and isomers;
  - (d) Delta-7 tetrahydrocannabinol (D7-THC) and isomers;
  - (e) Delta-6a,10a tetrahydrocannabinol (D6a,10a-THC) and isomers;

- (f) Ester forms of tetrahydrocannabinol including but not limited to:
    - (i) Delta-8 tetrahydrocannabinol acetate (D8-THCO);
    - (ii) Delta-9 tetrahydrocannabinol acetate (D9-THCO);
    - (iii) Delta-8 tetrahydrocannabiphorol acetate (D8-THCPO);
  - (g) Exo-tetrahydrocannabinol;
  - (h) Hydrogenated forms of tetrahydrocannabinol including but not limited to the following:
    - (i) Hexahydrocannabinol (HHC);
    - (ii) Hexahydrocannabiphorol (HHCP);
    - (iii) Hexahydrocannabihexol (HHCH);
    - (iv) Hexahydrocannabinol acetate (HHCO);
  - (i) Hydrogenated forms of cannabidiol (CBD) including but not limited to:
    - (i) H4-cannabidiol (H4-CBD);
    - (ii) H4-cannabidiol dimethylheptyl (H4-CBD-DMH);
  - (j) Synthetic forms of THC including but not limited to Dronabinol; and
  - (k) Tetrahydrocannabinol monomethyl ether (THCM).
- (2) The department may determine that other cannabinoids are synthetic cannabinoids if findings indicate:
- (a) the cannabinoid is novel relative to known naturally occurring cannabinoids; or
  - (b) the cannabinoid appears in a product at levels that are not achievable through natural production in the Cannabis plant.
- (3) If the department determines a cannabinoid is a synthetic cannabinoid under (2), a licensee may demonstrate to the department with clear and convincing evidence that the cannabinoids present in its product are not synthetic cannabinoids. A licensee may demonstrate that the cannabinoids are not synthetic through:
- (a) production batch records;
  - (b) a standard operating procedure that clearly and concisely indicates the process, starting materials, and reagents used to make the product; or
  - (c) traceability of sourced raw materials.
- (4) A certificate of analysis is not considered clear and convincing evidence of whether a product contains synthetic cannabinoids.

**Authorizing statute(s):** 16-12-112, MCA

**Implementing statute(s):** 16-12-101, 16-12-112, 16-12-117, MCA

### **Reasonable Necessity Statement**

NEW RULE 2 specifically implements and enforces the statutory prohibition on synthetic cannabinoids established by 16-12-101 and 16-12-117, MCA. The Montana Legislature has delegated rulemaking authority to the department so that it may define, identify, and regulate synthetic cannabinoids in accordance with legislative intent and scientific developments.

NEW RULE 2(1) identifies specific synthetic cannabinoids that are prohibited.

NEW RULE 2(2) states the department's discretion to determine that other, as-yet-unidentified cannabinoids are synthetic, based on factors such as a cannabinoid's novelty or its presence at levels unlikely to be achieved through natural processes.

NEW RULE 2(3) enables licensees to demonstrate to the department that a cannabinoid deemed synthetic under (2) is in fact naturally derived, outlining examples of evidence acceptable for such demonstrations.

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### **Small Business Impact**

With regard to the small business impact analysis requirements of 2-4-111, MCA, as amended by HB 592 (2025), the department has analyzed the proposed rule adoptions and the group or class of businesses directly affected by this rulemaking, and concludes those impacted small businesses are the testing laboratories, cultivators, dispensaries, or manufacturers of marijuana and marijuana products if they meet the definition of a small business under 2-4-102(13), MCA. As of September 1, 2025, there are 214 cultivators, 144 manufacturers, and one testing laboratory licensee active within Montana.

The department contends that any small business impact directly related to the prohibition of synthetic cannabinoids does not arise from the proposed rulemaking but through the legislature's enactment of public policy under HB 948 and HB 49. Any impacts to industry through this rulemaking are secondary and are mitigated to the greatest extent possible in NEW RULE 2(3), which enables licensees to demonstrate to the department that a cannabinoid deemed synthetic under NEW RULE 2(2) is in fact naturally derived, outlining examples of evidence acceptable for such demonstrations.

Documentation of the small business impact analysis is available upon request.

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## **Bill Sponsor Notification**

The primary bill sponsor of House Bill 49 was contacted by electronic mail and by U.S. mail on July 22, 2025. The department received no comments from the bill sponsor to incorporate into the proposal notice.

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## **Interested Persons**

The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the contact person in this notice or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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## **Rule Reviewer**

Todd Olson

## **Approval**

Brendan Beatty, Director



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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-292.1**

**Summary**

Updates to Responsible Alcohol Sales and Service Training Program Requirements and Implementation of Third Party Delivery Service Training Requirements

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**Hearing Date and Time**

Monday, November 3, 2025, at 11:00 a.m.

**Hearing Information**

Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Monday, November 10, 2025, at 5:00 p.m.

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**Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 17, 2025, at 5:00 p.m.

## Contact

Todd Olson, Rule Reviewer - Department of Revenue, Legal Services Office  
(406) 444-7905  
todd.olson@mt.gov

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## General Reasonable Necessity Statement

The department proposes to amend ARM 42.13.901, 42.13.902, 42.13.904, 42.13.905, 42.13.906, and 42.13.907 to update Responsible Alcohol Sales and Service (RASS) curricula requirements which is necessary for the department to implement House Bill 157 (2025) (HB 157) (revise alcohol laws related to responsible server and sales training) and House Bill 211 (2025) (HB 211) (third party delivery service training requirements). Other amendments throughout the rulemaking propose formalizing electronic communication between training providers and the department as a result of stakeholder feedback to the department and the department's transition to, and general preference of, conducting business primarily through electronic means, to the greatest extent practicable.

The department also notes that certain phrasing or drafting style of several rules lacks brevity, necessary subject modifiers, or is grammatically deficient. So several amendments are proposed to improve clarity, grammar, or phrasing of the rules with the goal(s) of simplifying and improving the content, which is a goal of Governor Gianforte's Red Tape Relief Initiative (to lessen or improve administrative regulation), where possible.

While this general statement of reasonable necessity covers the bases for the proposed rule amendments, it is supplemented below to explain rule-specific proposals.

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

### 42.13.901 DEFINITIONS

The following definitions apply to this subchapter:

- (1) "Acceptable forms of identification" include:
  - (a) any state-issued driver's license or identification card;

- (b) any Canadian government-issued driver's license or identification card;
  - (c) a passport;
  - (d) any federally recognized tribal identification card; and
  - (e) any form of government-issued identification whether issued digitally or in a hard-copy version in a digital or physical form.
- (2) ~~"Combined exam score" means the overall score of an exam administered by a private training provider where the Montana portion of the exam is weighted as 50 percent of the overall exam score.~~
- (3) ~~"House policies" means a company policy that dictates how a certain situation, activity, or process should be handled.~~
- (4) ~~"Incident log" means a document that tracks situations occurring on the licensed premises.~~
- (2) "Licensee" means the same as defined in 16-4-1003, MCA. For purposes of implementing 16-4-1002, MCA, and for RASS training compliance, a licensee may be referred to as:
- (a) an "off-premises licensee" - a person or entity licensed by the department under 16-4-115, MCA, with or without delivery endorsement and operating the licensed business in accordance with ARM 42.13.1105;
  - (b) an "on-premises licensee" - a person or entity licensed by the department under 16-3-213, 16-4-105, 16-4-201, 16-4-213, 16-4-311, 16-4-401, or 16-4-420, MCA, and operating the licensed business in accordance with ARM 42.13.405, 42.13.601, 42.13.802, 42.13.1102, 42.13.1103, 42.13.1104, or 42.13.1107, as applicable. An on-premises licensee also includes a concessionaire who has entered into a concession agreement with the on-premises licensee, authorized under 16-4-418, MCA, and ARM 42.12.133, and its employees; or
  - (c) a "third party delivery licensee" defined in [Sec. 1, Ch. 75, Laws of Montana (2025)].
- (5)(3) ~~"Private training provider" means a private business that provides responsible alcohol sales and service providing RASS training using a department-approved program that is approved by the department.~~
- (6)(4) ~~"Proof of training document" means a document stating showing the RASS training program name, training date, participant's name, and participant's date of birth, that is issued to a and the participant who obtained a passing score of 80 percent or more on the exam.~~
- (5) "RASS training" means the Responsible Alcohol Sales Service and Delivery Act training required under 16-4-1001, MCA, et seq.

- (6) "State trainer" means ~~an a department-approved individual that is approved by the department to provide responsible alcohol sales and service~~ providing RASS training using the department's curriculum training program.
- ~~(8)(7)~~ "Training records" means ~~records~~ documentation or information submitted electronically to the department by a state trainer or private training provider ~~that include showing the RASS training program name, training date, whether training was online or in person, and each participant's name, date of birth, and combined exam score.~~

**Authorizing statute(s):** 16-4-1009, MCA

**Implementing statute(s):** Sec. 1, Ch. 75, Laws of Montana (2025), 16-4-1002, 16-4-1006, MCA

### **Reasonable Necessity Statement**

In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.13.901 to incorporate new terms "off-premises licensee" and "on-premises licensee" as sub-definitions to the statutory definition of licensee (which is also proposed for addition to the rule) because HB 211 introduces this industry variation of reference to license categories based on where the consumption of alcoholic beverages is authorized (i.e., off of a licensed premises, or on the licensed premises). And adoption of the terms – and what license types are included - is preferred versus stating each license type that the department administers each time the rule requires it. The department also proposes to incorporate the definitions for "RASS training," since that is the type of training program to which the rules pertain, and "third party delivery licensee" to implement terminology created under HB 211.

The department proposes to repeal the definition of "combined exam score" because the lack of a common exam hampers the department's ability to analyze program effectiveness of each authorized training provider. However, a common exam allows the department to recognize weaknesses in training curricula and the department proposes to provide the exam for trainers to use as proposed in ARM 42.13.904(1)(f). The department also proposes the repeal of "house policies" and "incident log" as it is unnecessary to define commonly used terms and the department revised rule text in ARM 42.13.907(1) which obviates the need for these definitions.

Lastly, the rule's authorizing and implementing statutes are proposed for amendment to comply with 2-4-305(3), MCA.



#### **42.13.902 STATE TRAINING PROGRAM; DEPARTMENT AND STATE TRAINER RESPONSIBILITIES**

- (1) The department shall:
  - (a) ~~effective January 1, 2026, develop a curriculum~~ implement two RASS training programs: one for on-premises licensees, and one for off-premises licensees and third party delivery licensees that meeting the requirements of [Secs. 1 and 11, Ch. 75, Laws of Montana (2025)], 16-4-115, 16-4-1006, and ARM 42.13.907, as applicable;
  - (b) update the curriculum training programs in (1)(a) following each legislative session, as needed;
  - (c) ~~conduct a full review of the curriculum every five years;~~
  - (d) ~~issue determinations on state trainer applications within 30 days of the recruitment period closing;~~
  - (e)(c) facilitate the training of for state trainers;
  - (f)(d) provide RASS training materials electronically;
  - (g)(e) grade RASS training exams; and
  - (h)(f) issue proof of RASS training documents.
- (2) A state trainer shall:
  - (a) ~~provide a minimum of three hours of deliver~~ RASS training utilizing the department's curriculum training programs;
  - (b) ~~adhere to follow~~ the department's curriculum RASS training programs delivery requirements;
  - (c) ~~establish the time and location of~~ schedule training sessions and notify the department at least two weeks in advance of the training;
  - (d) ~~administer an a training program~~ exam provided by the department;
  - (e) electronically submit the training records attendance roster and all completed exams to the department within two weeks of a training session; and
  - (f) ~~abide by~~ comply with all applicable laws, regulations, and department policies concerning the confidentiality of training participants' personally identifiable information in training records. Training records must be transmitted securely.
- (3) The department shall will ~~not compensate pay~~ state trainers for providing RASS training. State trainers may charge participants up to \$15 per person a fee for each training session.

**Authorizing statute(s):** Sec. 11, Ch. 75, Laws of Montana (2025), 16-4-1009, MCA

**Implementing statute(s):** Secs. 1 and 11, Ch. 75, Laws of Montana (2025), 16-4-115, 16-4-1006, MCA

### **Reasonable Necessity Statement**

In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.13.902 to: (1) reflect the HB 157 requirement that RASS training curricula be separated into on-premises licensee and off-premises licensee versions based on the defined terms in ARM 42.13.901; and (2) implement HB 211 RASS training requirements for third party delivery licensees. However, since off-premises licensee RASS training requirements are so similar to that of third party delivery licensees, the department intends to implement a combined training program for these license types. Stated differently, as in (1)(a) the department proposes to implement two RASS training programs: one for on-premises licensees, and the other for off-premises licensees and/or third party delivery licensees.

The department proposes to repeal the five-year curriculum review in current (1)(c) because operation of the industry, changes in alcoholic beverage types, legislatively mandated public policy changes, and changes in the law, require curriculum review more frequently than every five years. The department also proposes the repeal of (1)(d) because the department no longer recruits trainers.

The department proposes to remove the minimum training length in (2)(a) and restate it in ARM 42.13.907 because that rule will include all training program curricula requirements.

The department proposes to require trainers to notify the department at least two weeks prior to a training session in (2)(c) to allow adequate notice for the department to conduct any necessary training curriculum audits for compliance with the RASSD Act and these rules.

The department lastly proposes to strike the stated maximum fee amount a trainer may charge a participant to take a RASS training class in (3) in favor of an open-ended fee structure. While the department understands that a fixed price model may be more economical for certain licensees in limited circumstances, the maximum fee structure has disincentivized trainers from providing training in Montana's more remote locations. The department contends that allowing "market price" fees for RASS training sessions, which is an incentive for trainers to service remote locations, outweighs the inability of receiving RASS training (a requirement for licensure) or any theoretical savings in a fixed price model.

Lastly, the rule's authorizing and implementing statutes are proposed for amendment to comply with 2-4-305(3), MCA.

**42.13.904 PRIVATE TRAINING PROGRAMS; DEPARTMENT AND PRIVATE TRAINER RESPONSIBILITIES**

- (1) The department shall:
  - (a) ~~effective January 1, 2026,~~ issue determinations decisions on private training program applications submissions for on-premises licensee training within 45 60 days, and for off-premises licensee or third party delivery licensee training within 30 days;
  - (b) publish private training providers' contact information on the department's web-site website;
  - (c) ~~provide notice of new legislation impacting curriculum~~ notify private training providers of statutory changes to RASS training within 30 days of passage which require action by the providers;
  - (d) evaluate private training provider program effectiveness, as needed, including consideration of the percentage of program participants who sell to underage or intoxicated persons; and
  - (e) notify the a private training provider of any required changes based upon training program deficiencies; and
  - (f) provide private training providers with a Montana specific exam for program participants to complete at the end of a training.
- (2) A private training provider shall:
  - (a) ~~provide a minimum of three hours of training utilizing the provider's approved curriculum;~~
  - ~~(b)~~(a) update and electronically submit its curriculum training program materials for department approval within 30 days of receiving the notice of new legislation in (1)(c);
  - ~~(c)~~(b) submit updated curriculum to the department for review and only utilize updated curriculum training program materials upon receipt of departmental approval;
  - ~~(d)~~(c) establish the time and location of in-person training sessions and notify the department at least two weeks in advance of any training;
  - ~~(e)~~(d) administer an the required Montana exam that includes a Montana portion provided by the department and questions based upon the curriculum training program content requirements set forth in ARM 42.13.907;
  - ~~(f)~~(e) grade exams;
  - ~~(g)~~(f) issue proof of training documents;

- ~~(h)~~(g) electronically submit training records to the department on a monthly basis in the form prescribed by the department within two weeks of a training session; and
  - (h) contact training participants who fail a compliance check, while employed, to determine the reason for failure and report findings to the department; and
  - (i) abide by comply with all applicable laws, regulations, and department policies concerning the confidentiality of training participant's personally identifiable information in training records. Training records must be transmitted to the department by secure means only.
- (3) The department may review a private training provider's training program if any five of the provider's training participants fails a compliance check, while employed, in any consecutive four-month period.
- ~~(3)~~(4) Upon determining that an approved training program is ineffective or that the private training provider failed to adhere to any requirement in (2), the department shall notify the provider, and the provider shall cease instructing the program may be subject to corrective action, including suspension or decertification of its training program. The To continue to offer training, the private training provider may must cure program deficiencies and reapply to have a its new training program reviewed and approved under the application process by the department.
- ~~(4)~~(5) The department shall will not compensate a private training providers for providing training services. The A providers may charge participants for the a training session.

**Authorizing statute(s):** 16-4-1009, MCA

**Implementing statute(s):** 16-4-1006, MCA

### **Reasonable Necessity Statement**

In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.13.904 to clarify the respective responsibilities of the department and private training program providers in the approval of training programs given the bifurcation of training curricula in HB 157 and the new third party delivery licensee and training requirements enacted by HB 211.

The department proposes amendments to (1)(a), effective January 1, 2026, to increase allowable time for the department to review and approve private training program provider submissions of on-premises licensee training programs because providers will now have the option to create two separate curricula, which the department anticipates may double the number of trainings that require approval. Since HB 211 statutorily mandates a 30-day review and approval of third party delivery licensee training, (1)(a) acknowledges and incorporates that

requirement upon the department and also includes off-premises licensees since the operation and training requirements are so similar to that of third party delivery licensees.

The department also proposes an amendment in new (1)(f), and alluded to in the amendments to ARM 42.13.902, to require training providers to use a Montana specific exam provided by the department which will allow the department to analyze any provider's rigor and effectiveness in its training program curricula.

Similar to the department's proposed amendments in ARM 42.13.902, the department proposes to: (1) remove the minimum training length in (2)(a) and restate it in ARM 42.13.907 because that rule will include all training program curricula requirements; and (2) require private training program providers to notify the department at least two weeks prior to a training session in (2)(c) to allow adequate notice for the department to conduct any necessary training curriculum audits for compliance with the RASSD Act and these rules.

The department proposes new (2)(i) to require a private training program provider to contact individuals who have failed any alcoholic beverage sales compliance check and report those findings to the department because determining the cause(s) why a training attendee failed a compliance check may indicate curricula construction deficiencies or expected outcomes. And as an extension of proposed (2)(i), the department proposes (3) to subject a private training program provider to a curriculum review as an early stage corrective action before the department is compelled to suspend or decertify the private training program provider.

Finally, the department proposes necessary clarifying amendments to proposed (5) to align corrective action standards with statute and with other administrative rules. Other amendments to (5) clarify procedures available to a private training program provider who desires to reapply for consideration of reinstatement to conduct RASS training. Absent these amendments, the corrective action and post-corrective action process is somewhat unclear to the detriment of a private training program provider and the department.

#### **42.13.905 STATE TRAINER APPLICATION AND APPROVAL PROCESS**

- (1) To become a state trainer, an individual must complete an application form provided by the department, meet the criteria provided in this rule, and obtain department approval. The department, ~~in its sole discretion,~~ may approve an application ~~for an individual to be a state trainer~~ in its sole discretion.
- (2) ~~To apply to be a state trainer, an applicant must:~~
  - ~~(a) possess a minimum of one year combined experience in:~~
    - ~~(i) law enforcement;~~
    - ~~(ii) communications;~~

- (iii) public relations;
    - (iv) healthcare; or
    - (v) education;
  - (b) serve on a drug or alcohol-related coalition;
  - (c) have endured an alcohol-related life-changing experience; or
  - (d) possess experience equivalent to the criteria above, as approved by the department.
- (3) In addition to the requirements in (2), an applicant must:
- (a) possess a minimum of one year experience in public speaking;
  - (b) be a high school graduate or possess the GED equivalent;
  - (c) be at least 21 years of age; and
  - (d) have no alcohol-related convictions within the past five years.
- ~~(4)~~(2) ~~Upon the department's approval of an application, the applicant~~ Applicants must attend the a department's training program, complete an exam, and pass the exam with a minimum achieve a minimum exam score of 90 percent to be certified as a state trainer.
- (3) To remain certified, a state trainer must:
- (a) conduct at least two RASS training sessions in any 12-month period;
  - (b) attend department training seminars when required; and
  - (c) pass an annual competency exam with at least a 90 percent score.
- (4) Failure to comply with the requirements of this rule or with other training requirements provided in law, may result in suspension or revocation of a trainer's certification.
- (5) ~~A state trainer shall retain certification unless it is revoked or suspended by the department or withdrawn by the trainer. The department may also revoke or suspend or revoke a state trainer's certification upon determining that the trainer is unsuitable for issues due to crimes or unprofessional conduct.~~
- (6) A state trainer whose certification has been revoked may reapply for certification under this rule after 180 days from the date of revocation.

**Authorizing statute(s):** 16-4-1009, MCA

**Implementing statute(s):** 16-4-1006, MCA

## Reasonable Necessity Statement

In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.13.905 to remove outdated or unnecessary state trainer requirements and to clarify the department's state trainer application process. The department makes the following proposals with the desired outcome that there will be an increase in the number of state trainers available to Montana's alcoholic beverages licensees:

- Clarify and restate in (1) the general state trainer application requirements and required department approval
- Strike current state trainer experience requirements in current (2) and (3) because they are burdensome, outdated, and unnecessary
- Amend proposed (2) and (3) to implement new requirements for a state trainer to remain certified by validating that the state trainer maintains current knowledge and expertise on the material they are presenting for certification of their training program participants
- Clarify in new (4) and current (5), as amended, of the disposition of a state trainer's certification for failure to comply with the law and/or these rules. The department also proposes to strike vague references to suitability of a trainer and restate to concern issues of criminal activity or unprofessional conduct

As an extension of the corrective action amendments proposed in (4) and (5), the department last proposes a necessary amendment, as proposed (6), to provide an opportunity for a state trainer to apply for re-certification under the rule if a prior certification is revoked. While this allowance has not previously been in the rule, similar opportunities under other licenses, registrations, or certifications exist and the department believes it equitable to extend potential re-certification to former state trainers.

## 42.13.906 PRIVATE TRAINING PROGRAM PROVIDER APPLICATION APPROVAL PROCESS

- (1) The department, ~~in its sole discretion, has the authority~~ is authorized to approve a private training provider's program pursuant to 16-4-1006, MCA.
- (2) ~~A private training provider's programs must adhere to~~ comply with the curriculum training program requirements ~~set forth in 16-4-1006, MCA, and ARM 42.13.907.~~
- (3) ~~An applicant seeking to provide in-classroom training~~ To offer in-person training, a private training program provider must submit:
  - (a) ~~the curriculum training program materials,~~ including the Montana specific training supplement;
  - (b) classroom materials used by the trainer and participants;
  - (c) instructional aids, including videos or other visual components; and

- (d) ~~a sample proof of training document; and,~~
  - (e) ~~the exam, its answers, and an explanation of how the combined exam score will be calculated.~~
- (4) ~~An applicant seeking to provide online training~~ To offer online training, a private training program provider must:
- (a) make the training program available to the department in its online format;
  - (b) incorporate videos, scenarios, or ~~games~~ other materials into the training program; and
  - (c) provide a sample proof of training document; ~~and,~~
  - (d) ~~submit the exam, its answers, and an explanation of how the combined exam score will be calculated.~~
- (5) A private training provider's program shall ~~retain its approval status~~ is approved for ~~five~~ two years unless it is revoked or suspended by the department, or withdrawn by the training provider. ~~Upon~~ Prior to the expiration of the ~~five~~ two-year term, the department shall notify the training provider of the current program's expiration and the provider may apply must submit its prospective training program materials under this rule and subject to ARM 42.13.903 to have its training program reapproved under the application process renewed.

**Authorizing statute(s):** 16-4-1009, MCA

**Implementing statute(s):** 16-4-1006, MCA

### **Reasonable Necessity Statement**

In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.13.906 to simplify and reorganize the text of the rule, include necessary statutory cross-references, update private training program provider requirements consistent with Montana specific exam content, and to clarify the rule's title regarding the department's approval process for private training program providers.

The proposed amendment to the rule's title is necessary because there is no application form that is submitted by a private training program provider and the existing title may be confusing.

The department proposes necessary amendments to (1) and (2) to acknowledge 16-4-1006, MCA, as the department's implementing authority to certify all server and sales training programs.



The department proposes an amendment in this rule to strike the combined exam language in (3)(e), opting instead to require training providers to use a Montana specific exam provided by the department which will allow the department to analyze any provider's rigor and effectiveness in its training programs.

Last, the department proposes to amend (5) to shorten the duration of department approval for a private training provider program from five years to two years because operation of the industry, changes in alcoholic beverage types, legislatively mandated public policy changes, and changes in the law, require curriculum review more frequently than every five years. In connection with the department's periodic review and reapproval of a private training provider program, the department proposes to provide additional guidance in (5) about notification and submission which is lacking in the current version of the rule.

#### **42.13.907 CURRICULUM REQUIREMENTS FOR STATE AND PRIVATE ON PREMISES, OFF-PREMISES, AND THIRD PARTY DELIVERY LICENSEE RASS TRAINING PROGRAMS**

- (1) In addition to the requirements in 16-4-1006, MCA, ~~the curriculum~~ a RASS training program for on-premises consumption licensees must ~~cover the:~~
  - ~~(a)~~ effects of alcohol on the body, including behavioral cues and absorption rates;
  - ~~(a)~~ provide the following minimum content:
    - ~~(b)~~(i) standard drink sizes and equivalency;
    - ~~(c)~~(ii) methods to identify and prevent sales to underage or intoxicated persons and prevent sales thereto;
    - ~~(d)~~(iii) strategies used by underage persons to obtain alcohol;
    - ~~(e)~~(iv) acceptable forms of identification;
    - ~~(f)~~(v) actions that can be taken to prevent an alcohol-related incident from occurring;
    - ~~(g)~~(vi) maintenance of documentation that may affect liability, including an incident log and house policies the benefits of effective operational policies and document maintenance practices related to the service of alcoholic beverages for licensees, and licensee liability; and
    - ~~(h)~~(vii) techniques for denying alcohol sales: best practices in the delivery of alcoholic beverages permitted under 16-4-201, MCA;
  - ~~(b)~~ consist of a minimum of two hours of content; and
  - ~~(c)~~ contain a minimum of six Montana specific techniques for denying alcohol sales using videos or other interactive training tools.

- (2) In addition to the requirements in 16-4-115 and 16-4-1006, MCA, a RASS training program for off-premises consumption licensees and/or third party delivery licensees must:
- (a) provide the following minimum content:
    - (i) methods to identify underage or intoxicated persons and preventing sales of alcoholic beverages to them;
    - (ii) strategies used by underage persons to obtain alcoholic beverages;
    - (iii) acceptable forms of identification used to purchase alcoholic beverage purchases;
    - (iv) methods to prevent an alcohol-related incident from occurring;
    - (v) best practices in the delivery of alcoholic beverages; and
    - (vi) the benefits of effective operational policies and document maintenance practices related to the service of alcoholic beverages for licensees, and licensee liability.
  - (b) consist of a minimum of one hour of content; and
  - (c) contain a minimum of three Montana specific techniques for denying alcohol sales using videos or other interactive training tools.
- (3) All RASS training programs must require participants to pass an exam with a score of 80 percent or better. A training program may allow participants to retake an exam if a first exam score was no lower than 70 percent. If participants score less than 70 percent on a first exam, the training program must require those participants to retake the entire training program and obtain a passing score on the retake exam.

**Authorizing statute(s):** Sec. 1, Ch. 75, Laws of Montana (2025), 16-4-1009, MCA

**Implementing statute(s):** Secs. 1 and 11, Ch. 75, Laws of Montana (2025), 16-4-115, 16-4-1006, MCA

### **Reasonable Necessity Statement**

In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.13.907 to simplify and reorganize the text of the rule, include necessary statutory cross-references, update private training program provider requirements consistent with Montana specific exam content, and to clarify the rule's title relative to the types of RASS training programs approved through the department (i.e., on-premises, off-premises, or third party delivery licensees).

The proposed amendment to the rule's title is necessary to sufficiently describe the rule's content.

The reorganization of rule sections and content is proposed as follows: (1) for on-premises licensees; (2) for off-premises licensees and for third party delivery licensees; and (3) RASS training exam passing. The department contends the proposed structure is necessary to implement the separate curriculum requirements for on-premises licensees from the off-premises mandates of HB 157 together with the third party delivery licensee and off-premises licensee delivery endorsement requirements from HB 211.

Lastly, the rule's authorizing and implementing statutes are proposed for amendment to comply with 2-4-305(3), MCA.

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### **Small Business Impact**

With regard to the small business impact analysis requirements of 2-4-111, MCA, as amended by HB 592 (2025), the department has determined that the group or class of businesses directly affected by this rulemaking are the current state trainers and private training program providers. As of September 1, 2025, there are 303 state trainers and nine private training program providers active within Montana.

The department does not contemplate that promulgation of this rulemaking will have any direct or adverse impact to those identified above because any perceived impact is a result of the underlying legislation being implemented.

Notwithstanding, retail licensees and/or RASS training participants could view the department's proposed amendment to ARM 42.13.902(3) (removing maximum RASS training fees) as potentially impactful, but to what degree is unknown and is relative among licensees. As stated in the statement of reasonable necessity for the proposed amendment, the maximum fee structure has disincentivized trainers from providing training in Montana's more remote locations. The department contends that allowing "market price" fees for RASS training sessions, which is an incentive for trainers to service remote locations, outweighs the inability of receiving RASS training (a requirement for licensure) or any theoretical savings in a fixed price model.

Documentation of the small business impact analysis is available upon request.

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## **Bill Sponsor Notification**

The primary bill sponsors of House Bill 157 and House Bill 211 were contacted by electronic mail on July 22 and 23, 2025, respectively, and again on September 18, 2025. The department received no comments from the bill sponsors to incorporate into the proposal notice.

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## **Interested Persons**

The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the contact person in this notice or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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## **Rule Reviewer**

Todd Olson

## **Approval**

Brendan Beatty, Director



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF REVENUE**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-372.1**

**Summary**

Amending the Quality Assurance Testing Protocol Document (SOP-001) to Increase Test Batch Size In Response to Testing Laboratory Constraints and Updating Web Page URLs

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**Hearing Date and Time**

Wednesday, November 5, 2025, at 10:00 a.m.

**Hearing Information**

Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Wednesday, November 12, 2025, at 5:00 p.m.

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**Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 17, 2025, at 5:00 p.m.

## Contact

Todd Olson, Rule Reviewer - Department of Revenue, Legal Services Office  
(406) 444-7905  
todd.olson@mt.gov

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## General Reasonable Necessity Statement

The department proposes to amend ARM 42.39.601, 42.39.610, 42.39.614, and the Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, Marijuana-Infused Products, and Marijuana Pre-Rolls (SOP-001) (v.3.0), adopted and incorporated by reference in ARM 42.39.610(14), which is necessary to increase the size of an acceptable “test batch” for marijuana and marijuana product quality assurance sampling protocols and laboratory testing. The department’s proposed increase in test batch size is in direct response to the needs of industry in that there is only one operational quality assurance testing laboratory in the state, where one year ago there were three, and the volume of marijuana and marijuana products tested by the laboratory is unsustainable without causing significant delays in tested product, which has an immediate and direct impact on sellable inventory statewide.

Incidental to the above-described amendments for test batch size, the department also proposes amendments to ARM 42.39.601(31), 42.39.610(1) and (6), and SOP-001, to clarify that random and representative samples are required for all types of testing. This includes licensee-initiated testing for general compliance, research and development (R&D), retesting, etc. These proposed amendments are necessary as the department is experiencing issues where a licensee, knowingly or unknowingly, uses R&D potency results on product labeling and those potency results are coming from a sample that is much smaller than it should be to be valid. This is not the intent of R&D testing and the department believes the proposed amendments are the least impactful approach to address issues of R&D potency shopping.

An electronic draft of the proposed revisions to SOP-001 (new matter underlined, deleted matter interlined) is available for viewing and public comment at <https://revenue.mt.gov/cannabis/testing-laboratory-endorsement>. For ease of reference, the proposed amendments can be found in sections 7.1.1 (pg. 4), 7.1.6 and 7.1.9 (Table 1.0; page 5), (new) 7.7.3 (page 14) and (renumbered) 7.7.8 (page 15), and 11.0 (pg. 18; version history).

Lastly, the department proposes to amend/update web address URLs in the rules for SOP-001 and the Quality Assurance Testing Requirements Appendix (Appendix) adopted and incorporated by reference in the rules.

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 42.39.601 DEFINITIONS

As used in this subchapter, the following definitions apply:

- (1) "Acceptance criteria" means the specified limits placed on the characteristics of an item or method that are used to determine data quality.
- (2) "Accredited college or university" means a college or university accredited by a regional or national accrediting agency that is an accreditor recognized by the U.S. Secretary of Education.
- (3) "Action level" means the threshold value that provides the criteria for determining whether a sample passes or fails an analytical test.
- (4) "Adulteration" means intentionally modifying or altering a marijuana item from its original form to increase its monetary value, evade undesirable test results, or conceal the true composition of a marijuana item.
- (5) "Analytical batch" means a set of matrix-specific laboratory test samples that are prepared together over a 24-hour time period using the same set of reagents for the same analysis and includes an LCS, MB, REP, and MS.
- (6) "Appendix" means the department's Quality Assurance Testing Requirements Appendix adopted and incorporated by reference in ARM 42.39.614.
- (7) "Applicant" means a person seeking endorsement for testing laboratory licensure or renewal of licensure.
- (8) "Batch" has the same meaning provided in ARM 42.39.102.
- (9) "CBD" has the same meaning provided in ARM 42.39.102.
- (10) "CBDA" has the same meaning provided in ARM 42.39.102.
- (11) "Certificate of analysis (COA)" has the same meaning provided in ARM 42.39.102.
- (12) "Coefficient of determination ( $r^2$ )" means a statistical measure that determines how well the regression approximates the actual data points in the calibration curve, with a regression of 1 being a perfect fit.
- (13) "Composite laboratory test sample" and "composite sample" mean a series of sample increments taken from different laboratory test samples, strains of usable marijuana, marijuana concentrates or extracts, marijuana-infused products,

marijuana items, harvest lots, process lots, or test batches thereof, that are combined, mixed, batched, or composited together for testing purposes.

- (14) "Contaminant" means any physical, chemical, or biological substance that may be harmful if consumed at concentrations above the action level. Potency is not a contaminant.
- (15) "Continuing calibration verification (CCV)" means a quality control sample that includes each of the target analytes at the mid-range of the calibration to evaluate the validity of the instrument's calibration over the entire sample sequence.
- (16) "Corrective action" means an action taken by a licensee to resolve, and prevent from recurrence, a problem with operations of the licensee.
- (17) "Customer" has the same meaning provided in ARM 42.39.102.
- (18) "Dilution" means the act of combining the same or different test batches of a harvest lot of marijuana, the same or different test batches of a process lot or marijuana concentrate and extract, or the addition of any ingredient to a harvest lot or process lot with the intention of reducing the level of contaminants to below the action level in a laboratory test sample.
- (19) "Direct marijuana-infused product" means a marijuana-infused product manufactured by infusing lipid-based products such as plant-based oils, animal fats, or petroleum-based products (e.g., coconut oil, vegetable oil, butter, salves, etc.) directly from tested and compliant usable marijuana. The term does not include marijuana-infused products manufactured using solvent-based or non-solvent-based concentrates and extracts.
- (20) "Final form" means the form of a marijuana item when it is available for sale by a licensee to a customer.
- (21) "Final packaging" means the packaging of the final form marijuana item.
- (22) "Harvest lot" means the specifically identified quantity of marijuana provided in SOP-001 that is cultivated utilizing the same growing practices, harvested within a 72-hour period at the same location, and cured under uniform conditions. A harvest lot may contain multiple strains until February 23, 2025. Effective February 24, 2025, a harvest lot must not contain multiple strains and must be identical in strain.
- (23) "Indirect marijuana-infused product" means a marijuana-infused product manufactured from only tested and compliant solvent-based or non-solvent-based concentrates.
- (24) "Ingredient" has the same meaning provided in ARM 42.39.102.
- (25) "Initial calibration verification (ICV)" means a quality control sample that includes each of the target analytes at the mid-range of the calibration using secondary



source standards to evaluate the validity of the calibration standards and calibration standards preparation.

- (26) "ISO" means International Organization for Standardization.
- (27) "ISO/IEC 17025" means the general requirements specified by the ISO/IEC for the competence of testing and calibration laboratories.
- (28) "ISO/IEC 17043" means the general requirements established by the ISO/IEC for proficiency testing.
- (29) "Laboratory control sample (LCS)" means a quality control sample that includes each of the target analytes at the mid-range of the calibration spiked into an analyte free matching matrix or a matrix that is as closely representative of the matrix being analyzed as possible, in order to evaluate the efficiency of the preparatory/extraction process. The LCS is prepared in the same manner as the rest of the laboratory test samples in the analytical batch. An LCS is required for contaminant testing only.
- (30) "Laboratory quality assurance" means a set of operating principles that enable laboratories to produce defensible data of known accuracy and precision and includes employee training, traceability, equipment preventative maintenance procedures, calibration procedures, and quality control testing.
- (31) "Laboratory test sample" means all sample increments collected from one test batch combined together into one sample container from which ~~quality assurance compliance~~ any type of testing is conducted.
- (32) "Limit of detection (LOD)" means the lowest quantity of a substance or analyte that can be distinguished from the absence of the substance within a stated confidence limit.
- (33) "Limit of quantitation (LOQ)" means the lowest concentration of an analyte in the specific matrix that can be reliably quantified while also meeting predefined goals for bias and imprecision.
- (34) "Marijuana" has the same meaning provided in 16-12-102, MCA, and ARM 42.39.102.
- (35) "Marijuana concentrate and extract" or "concentrate and extract" has the same meaning provided in 16-12-102, MCA, and ARM 42.39.102.
- (36) "Marijuana-infused products" has the same meaning provided in ARM 42.39.102.
- (37) "Marijuana items" has the same meaning provided in ARM 42.39.102.
- (38) "Marijuana pre-roll" or "pre-roll" means any combination of the following typically constructed with rolling paper, a filter, tip, or cone: flower, shake, leaf, trim, kief, or marijuana concentrate and extract. Marijuana pre-rolls are divided into two subgroups: infused pre-rolls and non-infused pre-rolls. Infused pre-rolls contain

previously tested and compliant usable marijuana and previously tested and compliant marijuana concentrate and extract, kief, trim, or other marijuana items. Non-infused pre-rolls contain only previously tested and compliant usable marijuana.

- (39) "Matrix" means the substances that are present in a sample except for the analytes of interest. The plural of the term – matrices – is also used, where appropriate.
- (40) "Matrix spike (MS)" means a quality control sample that is prepared by adding a known concentration of target analytes to a laboratory test sample spiked at a mid-range concentration of the calibration to evaluate matrix interference effects. The MS is prepared in the same manner as the rest of the laboratory test samples in the analytical batch.
- (41) "Method blank (MB)" means a quality control sample that is prepared using an analyte free matching matrix or a matrix that is as closely representative of the matrix being analyzed as possible to verify the absence of contamination in the preparatory/extraction process. The MB is prepared in the same manner as the rest of the laboratory test samples in the analytical batch.
- (42) "Method detection limit (MDL)" means a minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero as determined from analysis of a sample containing the analyte in a given matrix.
- (43) "Method reporting limit (MRL)" means the lowest amount of an analyte in a sample that can be quantitatively determined with stated, acceptable precision and accuracy under stated analytical conditions.
- (44) "Non-solvent-based marijuana concentrate and extract" means a marijuana concentrate and extract manufactured from usable marijuana using water, ice, dry ice, a press, sieve, or filter and that does not use any solvent listed in the Appendix or solvent defined in (61). The term includes kief, hash, and rosin.
- (45) "Preventative action" means a proactive action implemented to eliminate the cause of a potential nonconformance or other quality problem before it occurs.
- (46) "Process lot" means:
  - (a) any amount of marijuana concentrate or extract of the same type and processed in the same 48-hour period, using the same extraction methods, SOPs, ingredients, reagents, and test batches from the same or different harvest lots;
  - (b) any amount of marijuana-infused products of the same type and processed in the same 48-hour period, using the same ingredients, reagents, SOPs, and test batches from the same or different harvest lots or process lots of marijuana concentrate or extract; or

- (c) any amount of marijuana pre-rolls constructed in the same 48-hour period, using the same equipment, SOP, ingredients, reagents, and test batches from the same or different harvest lots or process lots.
- (47) "Proficiency test" means an evaluation of a testing laboratory's performance against pre-established criteria by means of interlaboratory comparisons of test measurements.
- (48) "Property owner permission form" has the same meaning provided in ARM 42.39.102.
- (49) "Quality control sample" means a sample that is produced and used by a testing laboratory for the purpose of ensuring the quality of the data and results. Quality control samples include initial calibration verifications, continuing calibration verifications, laboratory control samples, method blanks, replicates, and matrix spikes. When quality control samples fail, it is assumed the preparatory/extraction process, instrumentation, procedures, equipment, etc., are out of statistical control.
- (50) "Raw data" means any testing laboratory worksheet, records, memorandum, notes, or exact copies that are the result of original observations and activities of testing laboratory study and are necessary for the reconstruction and evaluation of the report of that study.
- (51) "Reagent" means a compound, mixture, substance, or chemical ingredient added to a system to cause a chemical reaction or test if a reaction occurs. A reagent may be used to tell whether a specific chemical substance is present by causing a reaction to occur with a chemical substance.
- (52) "Remediation" means the process or technique applied to marijuana items to remove contaminants from such marijuana items that have failed the required quality assurance compliance testing. Dilution is not a permissible form of remediation.
- (53) "Replicate (REP)" means a quality control sample that is a sub-sample of a laboratory test sample used to evaluate the reproducibility of the preparatory/extraction process. The REP is prepared in the same manner as the rest of the laboratory test samples in the analytical batch.
- (54) "Sample increment" means an individual portion of material collected from a test batch.
- (55) "Sample integrity" means maintaining marijuana items in a manner that prevents the degradation of testing laboratory results over time between the harvest/process lot, test batch, laboratory test sample, and customer product. Sample integrity factors include consistent storage, temperatures, humidity, and light exposure along with proper handling, transport, and tampering prevention.

- (56) "Sampling event" means any instance of sample collection conducted by a testing laboratory sampler at a single licensed location for purposes of quality assurance compliance testing.
- (57) "Secondary source standard" means chemical standards sourced from a different supplier or from a different lot number of the same supplier.
- (58) "Seed-to-sale tracking system" has the same meaning provided in ARM 42.39.102.
- (59) "Solvent" means a chemical compound described by its function in chemistry to dissolve, suspend, or extract analytes of interest from materials. Solvents are divided into the following classes:
- (a) Hydrocarbon solvents including aliphatic, aromatic, and paraffinic solvents;
  - (b) Oxygenated solvents including alcohols, ketones, esters, ethers, glycol ethers, and glycol ether esters; and
  - (c) Halogenated solvents that include halogens such as chlorine, bromine, or iodine.
- (60) "Solvent-based marijuana concentrate and extract" means a marijuana concentrate and extract manufactured from usable marijuana using solvents, or subcritical or supercritical carbon dioxide and that does not use water in any state phase. The term includes tinctures, shatter, budder, wax, resin, and hash oils.
- (61) "SOP-001" means the department's Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, Marijuana-Infused Products, and Marijuana Pre-Rolls document, adopted and incorporated by reference in ARM 42.39.610.
- (62) "Standard operating procedure (SOP)" means a written document that provides detailed instructions for the performance of all aspects of an analysis, operation, or action.
- (63) "Test batch" has the same meaning provided in ARM 42.39.102.
- (64) "Testing laboratory sampler" means an employee of a licensed testing laboratory who has been trained and authorized to collect random and representative laboratory test samples in accordance with ARM 42.39.610. A testing laboratory sampler shall not collect laboratory test samples from any licensee where an employment relationship exists or where the performance of any aspect of work for a marijuana business creates a conflict of interest.
- (65) "THC" has the same meaning provided in ARM 42.39.102.
- (66) "THCA" has the same meaning provided in ARM 42.39.102.
- (67) "Total potential psychoactive THC" has the same meaning provided in ARM 42.39.102.

- (68) "Total THC" means the sum of THC and THCa calculated using the following equation:
- (a)  $\text{Total THC} = (\text{THCa} \times 0.877) + \text{THC}$ .
- (69) "Traceability" means the principle of maintaining an unbroken chain of documentation tracking all laboratory samples, standards, reagents, and equipment utilized at every step of the laboratory process. This includes sample collection, preparation, analysis, data acquisition, and reporting.
- (70) "Validation" means the confirmation, by examination and objective evidence, that the requirements for an analytical method are fulfilled.

**Authorizing statute(s):** 16-12-202, 16-12-209, MCA

**Implementing statute(s):** 16-12-202, 16-12-209, MCA

#### **Reasonable Necessity Statement**

The department proposes to amend ARM 42.39.601(31) to clarify that random and representative samples are required for all types of testing which is provided in the third paragraph of the department's general statement of reasonable necessity (above).

#### **42.39.610 QUALITY ASSURANCE SAMPLING PROTOCOL**

- (1) A testing laboratory must collect samples of marijuana items from licensees for ~~the required quality assurance~~ any type of testing.
- (2) A testing laboratory must develop and implement a sampling SOP that details at minimum:
- (a) the testing laboratory's method for obtaining a random and representative sample for all matrices;
  - (b) sterile sampling technique for all matrices;
  - (c) testing laboratory sampler training;
  - (d) appropriate sampling equipment;
  - (e) appropriate sample transportation and storage;
  - (f) maintenance of sample custody and integrity; and
  - (g) sampling documentation and records.

- (3) Testing laboratories must create a sampling report form for each sampling event, as required by SOP-001.
- (4) The testing laboratory shall ensure sample integrity is maintained during transport to and storage at the testing laboratory licensed facilities. If the marijuana item specifies on the label how the product shall be stored, the testing laboratory shall store the sample as indicated.
- (5) An employee from the licensee requesting sample collection shall be present to observe sample collection but shall not assist the testing laboratory sampler while they are physically collecting the laboratory test samples.
- (6) The testing laboratory sampler shall collect a laboratory test sample that is random and representative of the test batch, meets the standards of SOP-001, and is sufficient to complete all ~~required quality assurance~~ testing including quality control samples and re-runs.
- (7) All sample increments from the same test batch shall be placed into one sample container that is free of the analytes of interest and appropriate for the analysis required.
- (8) At least 50 percent of the laboratory test sample must be homogenized prior to its use for the appropriate analysis.
- (9) Testing laboratories must refuse sample collection if sample adulteration is suspected and shall report incidents of suspected adulteration to the department within three business days. Adulteration may include:
  - (a) the application of kief to usable marijuana test batches;
  - (b) the application of solvents to usable marijuana test batches;
  - (c) the use of any deleterious substance to evade undesirable test results;
  - (d) the addition of any substance to increase any cannabinoid test result; or
  - (e) the addition of any substance to alter the weight of a marijuana item.
- (10) A licensee shall only order tests for marijuana items that the licensee has grown, produced, processed, or legally purchased from another licensee.
- (11) The licensee shall store and secure test batches in a manner that maintains sample integrity and security during laboratory testing.
- (12) Failed or remediated marijuana items shall be re-tested at the same testing laboratory from which the original failed test results came unless explicit written permission from the department is granted prior to re-testing.
- (13) The department may inspect marijuana sampling events to ensure sampling protocols are being followed.

- (14) The department adopts and incorporates by reference the "Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, Marijuana-Infused Products, and Marijuana Pre-Rolls" SOP-001 (Version 3-0 4.0) (~~August 24, 2024~~) ([date of adoption]), which describes the sampling protocol for marijuana, marijuana concentrates and extracts, marijuana-infused products, and marijuana pre-rolls. A copy of SOP-001 is available from the department electronically at [www.mtrevenue.gov/cannabis](http://www.mtrevenue.gov/cannabis) <https://revenue.mt.gov/cannabis/testing-laboratory-endorsement> and may also be obtained at 125 N. Roberts St., Helena MT 59601.

**Authorizing statute(s):** 16-12-202, 16-12-209, MCA

**Implementing statute(s):** 16-12-202, 16-12-209, MCA

### **Reasonable Necessity Statement**

The department proposes to amend ARM 42.39.610 and SOP-001, which is adopted and incorporated by reference in ARM 42.39.610(14), as described in the department's general statement of reasonable necessity (above).

### **42.39.614 QUALITY ASSURANCE TESTING REQUIREMENTS**

- (1) All marijuana items intended for final sale or transfer to a customer shall be tested in its final form. The addition of any ingredient or reagent after final quality assurance testing will require retesting with respect to the mandatory quality assurance testing requirements provided in the Quality Assurance Testing Requirements Appendix and the marijuana laws. The department adopts and incorporates by reference the Quality Assurance Testing Requirements Appendix (Version 1.0) (August 24, 2024), which provides quality assurance testing requirements from marijuana item classifications and subcategories and details specific contaminant testing requirements for these items. A copy of the Appendix is available from the department electronically at [www.mtrevenue.gov/cannabis](http://www.mtrevenue.gov/cannabis) <https://revenue.mt.gov/cannabis/testing-laboratory-endorsement> and may also be obtained at 125 N. Roberts St., Helena, MT 59601.
- (2) Composite laboratory test samples from the same or different process lots and test batches therein are prohibited.
- (3) Composite laboratory test samples from the same or different harvest lots and test batches therein are strictly prohibited. Effective February 24, 2025, multi-strain harvest lots and multi-strain composite laboratory test samples are prohibited.

- (4) Usable marijuana: a licensee shall submit for testing all harvest lots and test batches therein of usable marijuana for the analyses required in Table 1.0a of the Appendix prior to final sale to a customer. Usable marijuana, including trim or manicure, shall also be tested for the analyses provided in Table 1.0a of the Appendix prior to use in the production of marijuana pre-rolls and direct marijuana-infused products. A licensee may forego testing of usable marijuana, including trim and manicure, only if that usable marijuana is subjected to solvent or non-solvent-based extraction for the production of marijuana concentrates and extracts.
- (5) Solvent-based and non-solvent-based marijuana concentrate and extract: a licensee shall submit for testing all process lots and test batches therein of solvent-based and non-solvent-based marijuana concentrate and extract for the analyses provided in Table 1.0b of the Appendix prior to final sale to a customer and prior to use in the production of marijuana-infused products or marijuana pre-rolls.
- (6) Marijuana-infused products: a licensee shall submit for testing all process lots and test batches therein of marijuana-infused products for the analyses set forth under Table 1.0c of the Appendix prior to final sale to a customer.
- (7) Marijuana pre-rolls: If the potency of the marijuana pre-roll process lot in question is expected to change from that of the previously tested and compliant usable marijuana, a licensee shall submit for testing all the process lots and test batches therein of marijuana pre-rolls for the analyses provided in Table 1.0d of the Appendix prior to final sale to a customer. Examples include mixing multiple strains of usable marijuana into a process lot of pre-rolls and all process lots of infused pre-rolls.
- (8) A licensee shall submit for testing all process lots and test batches therein of marijuana items that consist of two or more previously tested and compliant marijuana items into a final form marijuana item (such as moon rocks or cannabis) for potency prior to final sale to customers.
- (9) Use of any untested marijuana item in the production of marijuana-infused products and marijuana pre-rolls is prohibited. Use of any untested marijuana item, except for usable marijuana – including trim and manicure – in the production of concentrates and extracts is prohibited.
- (10) The potency test for each sample must include:
  - (a) THCA;
  - (b) THC;
  - (c) Total potential psychoactive THC for marijuana items that require the application of heat for administration/consumption only;
  - (d) CBDA;
  - (e) CBD; and



- (f) all other cannabinoids a testing laboratory reports to the client on the certificate of analysis, which shall be entered into the seed-to-sale tracking system.
- (11) The laboratory test sample and related lot or test batch fail quality assurance testing for moisture analysis if the results are greater than 15.0 percent.
- (12) The laboratory test sample and related lot or test batch fail quality assurance testing for filth and foreign matter screening if the results are greater than the following action levels:
  - (a) 5.0 percent of stems 3mm or more in diameter; or
  - (b) 2.0 percent of seeds or other foreign matter.
- (13) The laboratory test sample and related lot or test batch fail quality assurance testing for microbiological screening if the results are greater than the following action levels:
  - (a) *Salmonella* species: non-detectable in 1.0 gram of material;
  - (b) Shiga-toxin producing *Escherichia coli* (STEC): non-detectable in 1.0 gram of material; and
  - (c) Pathogenic *Aspergillus* species *A. flavus*, *A. fumigatus*, *A. niger*, and *A. terreus* : Each non-detectable in 1.0 gram of material.
- (14) Microbiological testing using molecular methods must include an enrichment step that follows the protocol provided by the manufacturer, molecular method used, or product instructions for use. Decreasing the enrichment time outside of the range provided above is strictly prohibited.
- (15) The laboratory test sample and related lot fail quality assurance testing for mycotoxins if the results are greater than the following action levels:
  - (a) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg; and
  - (b) Ochratoxin A: 20 µg/kg of substance.
- (16) A laboratory test sample and related lot or test batch fail quality assurance testing for residual solvents if the results are greater than the action levels provided in Table 2.0 of the Appendix.
- (17) Heavy metals shall be tested at random. A laboratory test sample and related lot or test batch fail quality assurance testing for heavy metals if the results are greater than the action levels provided in Table 3.0 of the Appendix.
- (18) A laboratory test sample and related lot or test batch fail quality assurance testing for pesticides if the results are greater than the action levels provided in Tables 4.0a and 4.0b of the Appendix, as of their respective effective dates.

**Authorizing statute(s):** 16-12-202, 16-12-209, MCA

**Implementing statute(s):** 16-12-202, 16-12-209, MCA

### **Reasonable Necessity Statement**

The department proposes to amend/update the web address URL for the Appendix in ARM 42.39.614(1) as described in the fourth paragraph of the department's general statement of reasonable necessity (above).

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### **Small Business Impact**

With regard to the small business impact analysis requirements of 2-4-111, MCA, as amended by HB 592 (2025), the department has analyzed the proposed rule amendments, amendments to SOP-001, and the group or class of businesses directly affected by this rulemaking, and concludes those impacted small businesses are the testing laboratories, cultivators, dispensaries, or manufacturers of marijuana and marijuana products if they meet the definition of a small business under 2-4-102(13), MCA. As of September 1, 2025, there are 214 cultivators, 144 manufacturers, and one testing laboratory licensee active within Montana.

The department's estimate of positive fiscal impact is through an evaluation of four different license groups (based on 2024 annual dispensary sales volume): (1) the small group with sales of approximately \$200,000; (2) the medium group with sales of approximately \$500,000; (3) the large group with sales of approximately \$2M; and (4) the extra-large group with sales of \$6M and above. The estimated decreased testing costs based on average annual testing cost ranges are:

Increase Flower test batch size to 15 Lbs:

- for the small group – from \$418- \$523 with an average testing cost as a percentage of annual sales ranging from 0.18% - 0.23%.
- for the medium group - from \$1,200 - \$1,500 with an average testing cost as a percentage of annual sales ranging from 0.22% - 0.28%.
- for the large group - from \$5,073 - \$6,341 with an average testing cost as a percentage of annual sales ranging from 0.23% - 0.29%.
- for the extra-large group - from \$45,000 - \$56,250 with an average testing cost as a percentage of annual sales ranging from 0.58% - 0.72%.

Stated differently, and based on the data presented above, the department also provides the following table to illustrate projected annual cost savings for testing marijuana flower:

| Projected Annual Flower Testing Cost Savings |             |
|----------------------------------------------|-------------|
|                                              | 15 Lb Lot   |
| Sample Count Reduction                       | 6,390       |
| % Reduction of Samples                       | 22.1%       |
| Low Range Cost Reduction                     | \$1,278,000 |
| Mid Range Cost Reduction                     | \$1,437,750 |
| High Range Cost Reduction                    | \$1,597,500 |

Documentation of the small business impact analysis is available upon request.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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### **Interested Persons**

The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the contact person in this notice or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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### **Rule Reviewer**

Todd Olson

### **Approval**

Brendan Beatty, Director of Revenue



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF REVENUE**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-86.1**

**Summary**

Amendment of tobacco-related rules to provide or revise definitions supportive of 16-11-102 and 16-12-103, MCA, and to clarify tobacco manufacturer requirements and department processes

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**Hearing Date and Time**

Monday, November 3, 2025, at 10:30 a.m.

**Hearing Information**

Third Floor Reception Area Conference Room, Sam W. Mitchell Building, 125 North Roberts, Helena, Montana

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Monday, November 10, 2025, at 5:00 p.m.

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**Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 17, 2025, at 5:00 p.m.

## Contact

Todd Olson, Rule Reviewer - Department of Revenue, Legal Services Office  
(406) 444-7905  
todd.olson@mt.gov

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

#### 42.31.201 DEFINITIONS

The ~~following~~ definitions below apply to this subchapter:

- (1) “Characterizing nontobacco flavor” means an additive, compound, or ingredient that gives a specific taste, including, but not limited to, grape, strawberry, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, mint, rosemary, coriander, menthol, herb, or spice.
  - (a) Characterizing nontobacco flavor does not include:
    - (i) any process or change that brings out the natural flavor of tobacco, such as a fire curing; or
    - (ii) any aging process which enhances tobacco flavor without introducing any additive, compound, or ingredient, such as aging tobacco leaves inside a wooden barrel that used to contain alcoholic spirits.
  - (b) The department assumes that a product contains characterizing nontobacco flavor if a manufacturer shows or suggests, explicitly or implicitly on the label, packaging, or advertising, that the product has this kind of flavor.
- (2) “Cigar” means a roll of tobacco wrapped in 100% natural leaf tobacco or:
  - (a) is wrapped in any substance that contains 75 percent or more tobacco which did not in the reconstitution process lose its tobacco character (taste, aroma, identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars; and
  - (b) does not meet the tobacco product criteria in ARM 42.31.206(1).
- ~~(1) “Interstate commerce” means the transportation of tobacco products intended for delivery to a person licensed by the department to receive unstamped or untaxed tobacco products in Montana or intended for delivery into another state.~~

~~(2)~~(3) "Montana Department of Justice current tobacco product directory" means the list of tobacco manufacturers and brands directory as required by 16-11-504, MCA.

(4) "Premium cigar" means the same as the definition provided in 16-11-102, MCA.

~~(3)~~(5) "Reporting entity" means any Montana cigarette wholesaler or licensed Montana retailer acting as a tobacco wholesaler who brings tobacco products into Montana for sale to consumers.

~~(4)~~(6) "Retailer acting as a tobacco wholesaler" means a licensed retailer ~~who purchases~~ buying other tobacco products from a manufacturer, distributor, or importer who ~~has did not prepaid~~ prepay the tax on tobacco products.

~~(5)~~(7) "Statutory discount" means the amount ~~the a~~ wholesaler or retailer ~~is allowed~~ may use to defray cover their ~~administrative expenses~~ costs.

~~(6)~~(8) "Tobacco products" include, but are not limited to:

- (a) cigarettes;
- (b) cigars;
- (c) smoking, chewing, and snuff tobaccos; and
- (d) moist snuff.

~~(7)~~(9) "Wholesale price" means the comparable arm's-length price for which a manufacturer sells a tobacco product to a wholesaler or ~~any~~ other person before applying any discount or ~~other~~ reduction.

**Authorizing statute(s):** 16-11-103, MCA

**Implementing statute(s):** 16-11-102, 16-11-202, MCA

### **Reasonable Necessity Statement**

The department proposes to amend ARM 42.31.201 to incorporate the definition of "premium cigar" found in 16-11-102, MCA, as amended by Senate Bill 122 (2023) (SB 122), and to provide an additional definition for what constitutes "characterizing nontobacco flavor."

Defining "characterizing nontobacco flavor" is necessary because the premium cigar definition uses this unique phrase to differentiate premium cigars, and its rate of taxation, versus non-premium (i.e., regular) cigars. The proposed definition was prepared by the department after its receipt of input from stakeholders involved in the enactment of SB 122.

The department proposes to relocate the existing definition of "cigar" from ARM 42.31.206 to 42.31.201 because the department's current practice is to provide definitions in one rule, to the greatest extent practicable. The department also proposes to remove the definition of

“interstate commerce” as it has not ever been used in the subchapter. Based on the proposed amendments, it is necessary for the department to renumber existing definitions.

The department also notes that certain phrasing or drafting style in the rule lacks brevity, necessary subject modifiers, or is grammatically deficient. So several amendments are proposed to improve clarity, grammar, or phrasing of the rules with the goal(s) of simplifying and improving the content, which is a goal of Governor Gianforte's Red Tape Relief Initiative (to lessen or improve administrative regulation), where possible.

#### **42.31.206 A TOBACCO PRODUCT LABELED AS ANYTHING SOMETHING OTHER THAN A CIGARETTE**

- (1) A tobacco product labeled as ~~anything~~ something other than a cigarette, ~~or not bearing a~~ with no label, including but not limited to little cigars, may be considered ~~a cigarette, as provided described in ARM 42.31.207, and under 16-11-102, MCA, if it meets two or more of the following criteria:~~
  - (a) the product is sold in packs ~~containing~~ with 20 or 25 sticks;
  - (b) the product is ~~available for sale~~ sold in cartons of ten packs;
  - (c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;
  - (d) the product is ~~of a~~ the same length and ~~diameter~~ width found in commercially manufactured cigarettes;
  - (e) the product has a cellulose acetate or ~~other integrated~~ similar built-in filter;
  - (f) the product weighs less than three pounds per thousand sticks;
  - (g) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
  - (h) other evidence proof that the product ~~fits within the definition of~~ is a cigarette in under 16-11-102, MCA.
- (2) Tobacco products ~~that are~~ determined to be cigarettes must meet the requirements of 16-11-307, MCA.
- (3) ~~A cigar is a roll of tobacco that is wrapped in 100% natural leaf tobacco or:~~
  - (a) ~~is wrapped in any substance that contains 75% or more tobacco which did not in the reconstitution process lose its tobacco character (taste, aroma, identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars; and~~
  - (b) ~~does not meet the criteria stated in (1).~~

**Authorizing statute(s):** 16-11-103, MCA

**Implementing statute(s):** 16-11-102, MCA

### **Reasonable Necessity Statement**

As provided in the department's statement of reasonable necessity for the amendment to ARM 42.31.201, the proposed amendment to ARM 42.31.206 reflects the necessary relocation of the definition of "cigar" to ARM 42.31.201.

The department also notes that certain phrasing or drafting style in the rule lacks brevity, necessary subject modifiers, or is grammatically deficient. So several amendments are proposed to improve clarity, grammar, or phrasing of the rules with the goal(s) of simplifying and improving the content, which is a goal of Governor Gianforte's Red Tape Relief Initiative (to lessen or improve administrative regulation), where possible.

### **42.31.207 DEPARTMENT DETERMINATIONS OF TOBACCO PRODUCTS**

- (1) A tobacco manufacturer may request a determination from the department as to determine whether if its product is a cigarette ~~within the meaning of defined in 16-11-102, MCA.~~
- (2) ~~Upon receipt of a manufacturer's request for determination, When the department shall determine if a product is a cigarette within the meaning of 16-11-102, MCA, using receives a manufacturer's request to determine whether a product is a cigarette under (1), it will apply the criteria in ARM 42.31.206 and the characteristics of the tobacco product, its packaging and labeling, and the totality of the circumstances.~~
- (3) If the department receives information from a source other than the manufacturer that a tobacco product may qualify as a cigarette ~~under 16-11-102, MCA, from a source other than the manufacturer, the department may conduct a review and issue a determination in accordance with (4) through (6) consider that information.~~
- (4) ~~Along with a request for determination, or upon request by the department, the A manufacturer shall submit~~ must provide the department with the following for a determination request:
  - (a) product samples of at least 20 sticks of each style within each brand family for which a determination is requested;
  - (b) the weight per one thousand sticks of the product;



- (c) all advertisements, ~~and labels, and in-store display material~~ that mention or ~~depict~~show the product and point of sale merchandising material for the product; and
- (d) the package and any larger container ~~such as like~~ a carton, or detailed ~~graphics~~ images for any ~~unprinted or proposed~~ packaging that is not printed yet or planned for future use.
- (5) The manufacturer may ~~submit~~ include any other relevant ~~evidence~~ information for the department to consider ~~when making the determination in its determination~~.
- (6) The department shall will notify the tobacco product manufacturer of its ~~determination~~, in writing, within ten days after the department makes the of its determination.
- (7) ~~ARM 42.31.206 and 42.31.207 are not effective until July 1, 2007.~~

**Authorizing statute(s):** 16-11-103, MCA

**Implementing statute(s):** 16-11-102, MCA

#### **Reasonable Necessity Statement**

The department proposes to amend ARM 42.31.207 because the department notes that certain phrasing or drafting style in the rule lacks brevity, necessary subject modifiers, or is grammatically deficient. So several amendments are proposed to improve clarity, grammar, or phrasing of the rules with the goal(s) of simplifying and improving the content, which is a goal of Governor Gianforte's Red Tape Relief Initiative (to lessen or improve administrative regulation), where possible. Other proposed changes reflect grammatical improvements for improved clarity of processes.

The department proposes to amend the title of the rule to clarify what kind of determinations apply to the rule. The department also proposes to amend (1) to clarify that "cigarette" is a defined term and is an improvement of the existing text.

The proposed amendments in (2) through (6) seek to remove unnecessarily redundant text and to improve sentence grammar within the rule sections.

Finally, the department proposes to strike (7) because the rule provision is outdated and inaccurate in its inclusion of an effective date for ARM 42.31.206.

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### **Small Business Impact**

With regard to the small business impact analysis requirements of 2-4-111, MCA, as amended by HB 592 (2025), the department has determined that no group or class of businesses directly affected by this rulemaking meets the definition of “small business” found in 2-4-102, MCA, nor does the rulemaking represent a significant departure from existing department practices for the out-of-state tobacco manufacturers in light of the changes enacted under SB 122.

Documentation of the small business impact analysis is available upon request.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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### **Interested Persons**

The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the contact person in this notice or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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### **Rule Reviewer**

Todd Olson

### **Approval**

Brendan Beatty, Director of Revenue



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF TRANSPORTATION**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-172.1**

**Summary**

These proposed new rules create procedures to address camping and removal and storage of personal property in the right-of-way of state highways.

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**Hearing Date and Time**

Friday, October 31, 2025, at 10:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed rulemaking. There will be no in-person hearing. Interested persons may access the remote conferencing platform in the following ways:

Join Zoom Meeting

<https://mt-gov.zoom.us/j/81881517732?pwd=WzQ2Ue1E8mXGaauctCZ3EZhbIOIGMg.1>

Meeting ID: 818 8151 7732

Password: 800026

Dial by Telephone

+1 646 558 8656

Meeting ID: 818 8151 7732

Password: 800026

Find your local number: <https://mt-gov.zoom.us/j/keixz2IRfF>

## **Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted to the contact person below. Comments must be received by Friday, November 7, 2025, at 5:00 p.m.

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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 24, 2025, at 5:00 p.m.

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## **Contact**

Aliselina Strong  
406-444-9415  
[astrong@mt.gov](mailto:astrong@mt.gov)

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## **General Reasonable Necessity Statement**

These proposed new rules are needed to give clear instructions to local law enforcement officers and Montana Department of Transportation workers on how to remove things that are located in the state highway right-of-way, while making sure people affected by these actions have fair legal protections.

---

## **Rulemaking Actions**

### **ADOPT**

The rules proposed to be adopted are as follows:

### **NEW RULE 1 (18.7.401) DEFINITIONS**

- (1) "Apparent utility" means items used to meet basic human needs or something that could be useful to a person, like a tent, blanket, or jacket, as long as it still works for its intended use.

- (2) “Enforcement action” means the authorized cleanup of a campsite or property stored in the state highway right-of-way, pursuant to [HB 940].
- (3) “Enforcement site” means the location where the cleanup happens.
- (4) “Overnight camping” does not include commercial truck drivers who must stop for required breaks or because their official permit allows it.

**Authorizing statute(s):** House Bill 940, 69th Legislative Session (2025)

**Implementing statute(s):** House Bill 940, 69th Legislative Session (2025)

## **NEW RULE 2 (18.7.402) CLEANUP NOTICES**

- (1) Before removing campsites or people’s items, the department must post notice(s).
- (2) The notice(s) shall be posted:
  - (a) at the camp or storage site in an easily seen location;
  - (b) at other nearby public places like the courthouse, local shelter, food bank, or other areas where unhoused people may gather.
- (3) If the site has overnight camping, the notice shall be posted at least three days (72 hours) before cleanup. If only property is located there, the notice shall be posted at least five days (120 hours) before cleanup.
- (4) The notice shall be protected from weather damage by a plastic sleeve or other covering.
- (5) The notice will include:
  - (a) the scheduled cleanup date;
  - (b) the location;
  - (c) what happens if the notice is not followed; and
  - (d) where people’s items will be after cleanup.
- (6) The department will document the date and location of posted notices.
- (7) Notices will stay up for at least 30 days after the cleanup.

**Authorizing statute(s):** House Bill 940, 69th Legislative Session (2025)

**Implementing statute(s):** House Bill 940, 69th Legislative Session (2025)

### **NEW RULE 3 (18.7.403) CLEANUP PROCESS**

- (1) The department will record the cleanup by photos or video before, during, and after it happens.
- (2) If someone returns to the site during the cleanup, they can take their things as long as it is safe to themselves and other people.

**Authorizing statute(s):** House Bill 940, 69th Legislative Session (2025)

**Implementing statute(s):** House Bill 940, 69th Legislative Session (2025)

### **NEW RULE 4 (18.7.404) STORAGE AND DISPOSAL OF PERSONAL PROPERTY**

- (1) After cleanup, the department will make a reasonable effort to find items such as those listed below and give them to local police:
  - (a) ID cards and legal and medical papers;
  - (b) prescription medicine and medical devices;
  - (c) weapons;
  - (d) stolen or illegal items.
- (2) After cleanup, the department will make a reasonable effort to keep some types of items safe at a local storage yard for 30 days before throwing them away, such as:
  - (a) useful items, like tents, blankets, clothes, or working tools;
  - (b) items that appear to have personal value, such as photographs, letters, or cards.
- (3) After cleanup, items that the department may throw away include:
  - (a) unsafe items, including those with human or animal waste, pests or mold, explosives, or drug paraphernalia;
  - (b) items likely to become unsafe while in storage, such as food or things that may mold;
  - (c) items that are hard to remove or store, due to large size or weight; or
  - (d) garbage or trash.

- (4) While storing items, the department shall provide reasonable protection from theft and the weather.
- (5) Neither the department nor law enforcement is responsible for lost or stolen items during this process unless the loss is a result of their failure to follow these rules.

**Authorizing statute(s):** House Bill 940, 69th Legislative Session (2025)

**Implementing statute(s):** House Bill 940, 69th Legislative Session (2025)

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### **Small Business Impact**

HB 940 explains how the department will handle activities on state highways and does not add new rules, costs, or restrictions for small businesses. The proposed new rules only address how the department will remove unauthorized overnight camping items from state highway areas. Because of this, small businesses are not affected by new requirements, fees, or limits. If asked, records from the department's small business impact analysis can be provided.

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### **Tribal Impact**

With regard to the requirements of 2-15-142, MCA, the department has determined that HB 940 solely addresses overnight camping on state highway rights-of-way and does not impose new regulations, costs, or restrictions on tribal governments or their entities. As such, the adoption of the above-referenced rules will not have direct tribal implications.

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### **Bill Sponsor Notification**

The bill sponsor was contacted by email on May 23, 2025. The bill sponsor had no comments.

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### **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person above or may be made by completing a request form at any rules hearing held by the department.

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**Rule Reviewer**

Valerie A. Balukas

**Approval**

Christopher Dorrington





**MONTANA  
ADMINISTRATIVE  
REGISTER**



**MONTANA TAX APPEAL BOARD**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-365.1**

**Summary**

Procedures for an informal review of class four residential property

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**Hearing Date and Time**

Friday, October 31, 2025, at 9:00 a.m.

**Hearing Information**

The board will hold a public hearing at 560 North Park Avenue, Suite 201, Helena, Montana.

**Virtual Hearing Information**

<https://mt-gov.zoom.us/j/86171656990?pwd=5k143skXUTW5tp3D3woOfKKzo7hzWe.1>

**Comments**

Please submit all comments using the contact information below or [mtab@mt.gov](mailto:mtab@mt.gov). Comments must be received by Monday, November 10, 2025, at 5:00 p.m.

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**Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 24, 2025, at 5:00 p.m.

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## Contact

Montana Tax Appeal Board  
406-444-9570  
mtab@mt.gov

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## Rulemaking Actions

### ADOPT

The rule proposed to be adopted is as follows:

#### **NEW RULE 1 CLASS FOUR RESIDENTIAL PROPERTY APPEALS; OPTIONAL INFORMAL REVIEW**

- (1) A taxpayer filing an appeal with the Montana Tax Appeal Board (board) in accordance with 15-2-301(1)(b), MCA, for Class Four residential property may elect to have the appeal heard informally.
- (2) A taxpayer elects an informal review of their appeal:
  - (a) on the MTAB 801 appeal form when filing their appeal;
  - (b) by filing a motion with the Board prior to the initial scheduling conference that sets the appeal schedule; or
  - (c) by requesting an informal review during the scheduling conference and confirming their election in writing.
- (3) An election for an informal review is irrevocable after the initial scheduling conference.
- (4) The informal review may be conducted in person or via telephonic or video conferencing methods.
- (5) No dispositive motions, such as motions to dismiss or motions for summary judgment, may be filed during an informal review.
- (6) During an informal review, the board may limit the exchange of information. Each party shall disclose the names of any proposed witnesses and provide copies of all proposed exhibits to the board and the opposing party in accordance with the schedule. If a party fails to disclose any witnesses or exhibits prior to the informal review hearing, the board may exclude its admittance into the proceedings. All properly disclosed exhibits will be admitted into the record. Either party may still object to exhibits. The board may allow undisclosed rebuttal exhibits only to counter opposing evidence.
- (7) At an informal review hearing, each party may present witnesses and exhibits, cross-examine opposing witnesses, and provide closing statements. While equal

time will be allotted to the parties for presentations, the board may allocate that time at its discretion.

- (8) The board's decisions made under an informal review are final and binding on all parties and are not subject to reconsideration, further appeal, or judicial review. Decisions issued through the board's informal review process are unpublished and shall not be considered binding precedent.

**Authorizing statute(s):** 2-4-201, 15-2-301, MCA

**Implementing statute(s):** 15-2-301, 15-15-104, MCA

### **Reasonable Necessity Statement**

The Montana Tax Appeal Board (MTAB) proposes to adopt a new rule to implement SB 302, which delegates the rulemaking authority to create an informal hearing process for class four residential property. This new rule will create a uniform procedure for a taxpayer to request and receive an informal hearing. The legislature set the basis for an informal review process and this rule will establish the procedure. The procedure is as follows:

- Section (1) authorizes a taxpayer to elect an informal review in lieu of a formal hearing. The board contends that a cross reference to controlling authority for the informal process is informational and beneficial to taxpayers.
- Section (2) sets forth the procedure and applicable deadlines for a taxpayer to elect an informal review. During the appeal process, the board provides three opportunities to choose an informal review and the procedural instructions for this irrevocable election will be helpful for the taxpayer. The procedure provided in (2)(c) may also increase the number of informal review elections based on information the taxpayer receives during a scheduling conference with the board and representatives from the Department of Revenue.
- Section (3) provides that the election of an informal review becomes irrevocable following the initial scheduling conference. Upon commencement of the informal process, the taxpayer waives procedural safeguards associated with formal adjudication, including discovery, dispositive motions, and the right to revert to formal hearing. The taxpayer also waives the right to judicial appeal. The board contends this is a necessary reiteration of the irrevocable nature of an informal review.
- Section (4) prescribes the manner in which informal hearings will be conducted. Given the non-appealable nature of informal decisions, in-person hearings may not be required.
- Section (5) eliminates dispositive motions from informal proceedings, thereby ensuring the taxpayer's appeals are not delayed or impeded by formal legal motions. The board contends that without a restriction on dispositive motions, an informal review could

easily change into a more substantive procedural process and become burdensome for some taxpayers.

- Section (6) removes formal discovery procedure from the informal process and substitutes a streamlined method for the exchange of information. While formal exhibit admission procedures are waived, parties retain the right to object to proposed evidence. The taxpayer's inability to appeal to district court lessens the necessity of a formal evidentiary record allowing for a quicker and less formal hearing process.
- Section (7) defines the structure and length of the informal hearing. While the format generally mirrors that of a formal hearing, the board has discretion to determine the length of the proceeding. Equal time for presentations will be afforded to both parties. This section gives the taxpayers guidelines on the hearing process and how time will be allotted during the hearing.
- Section (8) clarifies that informal review decisions are final and not subject to appeal under the governing statute. Due to the abbreviated procedural framework and absence of formal discovery, the resulting record may be limited. Accordingly, decisions issued through this process are not intended to establish legal precedent or alter existing law.

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### **Small Business Impact**

The proposed new rule will only affect MTAB's hearing procedures relating to class four residential property and no appeal will be heard informally unless selected by the appellant. Additionally, informal review is not available for commercial properties.

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### **Bill Sponsor Notification**

The bill sponsor, Daniel Zolnikov, was notified by mail and email on August 8, 2025.

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### **Interested Persons**

MTAB maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person above or may be made by completing a request form at any rules hearing held by MTAB.

**Rule Reviewer**

Travis Brown, Rule Reviewer

**Approval**

Travis Brown, Chair, Montana Tax Appeal Board



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF ADMINISTRATION**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-450.2**

**Summary**

The department has amended administrative rules pertaining to credit unions.

**Previous Notice(s) and Hearing Information**

On August 22, 2025, the Department of Administration published MAR Notice No. 2025-450.1 proposing changes to the agency's credit union rules in the 2025 Montana Administrative Register, Issue Number 16. No hearing was scheduled or held.

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**Final Rulemaking Action – Effective October 11, 2025**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**2.59.405 RETENTION OF CREDIT UNION RECORDS**

**2.59.429 ADOPTION OF MODEL BYLAWS AND STATUTORY REFERENCE FOR CREDIT UNIONS**

**2.59.436 ORGANIZING A NEW CREDIT UNION**

**2.59.437 ANNUAL REPORTS**

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**Statement of Reasons**

No comments were received.

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**Contact**

Heather Bernet  
(406) 841- 2922  
banking@mt.gov  
Montana Relay: 711  
Fax: 406-841-2930

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**Rule Reviewer**

Don Harris

**Approval**

Misty Ann Giles



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF COMMERCE**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-310.2**

**Summary**

Amendment of ARM 8.111.401, 8.111.402, 8.111.403, 8.111.404, 8.111.406, 8.111.407, and 8.111.409 pertaining to the Reverse Annuity Mortgage Program

**Previous Notice(s) and Hearing Information**

On August 22, 2025, the Department of Commerce published MAR Notice No. 2025-310.1 pertaining to the public hearing on the proposed amendment of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 16.

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**Final Rulemaking Action – Effective October 11, 2025**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**8.111.401 PURPOSE OF REGULATIONS**

**8.111.402 DEFINITIONS**

**8.111.403 COUNSELING REQUIREMENTS**

**8.111.404 ELIGIBILITY REQUIREMENTS**

**8.111.406 REPAYMENT OF THE LOAN**

**8.111.407 SECURITY FOR THE LOAN**

**8.111.409 CASH ADVANCES**



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**Statement of Reasons**

No comments were received.

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**Contact**

Jada Maynor  
(406) 841-2596  
jada.maynor@mt.gov  
Montana Relay: 711

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**Rule Reviewer**

Amy Barnes

**Approval**

Mandy Rambo, Deputy Director



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-123.2**

**Summary**

Changes to administrative rules following board actions, to implement Senate Bill 227, and to align with the Red Tape Relief Initiative

**Previous Notice(s) and Hearing Information**

On July 25, 2025, the Board of Professional Engineers and Professional Land Surveyors (agency) published MAR Notice No. 2025-123.1 regarding the public hearing on the proposed changes to the agency's rules, in the 2025 Montana Administrative Register, Issue No. 14.

On August 18, 2025, a public hearing was held on the proposed rule changes via the videoconference and telephonic platform. No comments were received by the comment deadline.

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**Final Rulemaking Action – Effective October 11, 2025**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**24.183.303 DEFINITIONS**

**24.183.509 EXAMINATION PROCEDURES**

**24.183.801 COMITY FOR PROFESSIONAL LAND SURVEYORS**

**24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY**

**24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS**

**24.183.2102 INACTIVE LICENSURE**

**REPEAL**

The agency has repealed the following rules as proposed:

**24.183.401 BOARD ELECTED OFFICERS**

**24.183.402 BOARD MEETINGS**

**24.183.403 BOARD SEAL**

**24.183.506 EQUIVALENCY OF MILITARY EDUCATION, TRAINING, AND EXPERIENCE**

**24.183.2401 SCREENING PANEL**

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**Statement of Reasons**

No comments were received.

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**Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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**Rule Reviewer**

Quinlan L. O'Connor

**Approval**

Sarah Swanson, Commissioner

**Approval**

Troy Jensen, Chair, Board of Professional Engineers and Professional Land Surveyors



MONTANA  
ADMINISTRATIVE  
REGISTER



**BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-138.2**

**Summary**

Implementing House Bill 384 and revising the dates to apply for speech-language pathology or audiology assistant licensure

**Previous Notice(s) and Hearing Information**

On July 25, 2025, the Board of Speech-Language Pathologists and Audiologists (agency) published MAR Notice No. 2025-138.1 regarding the public hearing on the proposed changes to the agency's rules, in the 2025 Montana Administrative Register, Issue No. 14.

On August 14, 2025, a public hearing was held on the proposed changes to the rules via the videoconference and telephonic platform. No comments were received by the comment deadline.

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**Final Rulemaking Action – Effective October 11, 2025**

**AMEND AS PROPOSED**

The agency has amended the following rule as proposed:

**24.222.550 ASSISTANT LICENSURE – INITIAL APPLICANTS**

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**Statement of Reasons**

No comments were received.

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**Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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**Rule Reviewer**

Jennifer Stallkamp

**Approval**

Sarah Swanson, Commissioner

**Approval**

Hillary Carter, Presiding Officer, Board of Speech-Language Pathologists and Audiologists



MONTANA  
ADMINISTRATIVE  
REGISTER



**BOARD OF NURSING  
DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-257.2**

**Summary**

Adopting substantial equivalency standards to implement House Bill 246

**Previous Notice(s) and Hearing Information**

On August 22, 2025, the Board of Nursing (agency) published MAR Notice No. 2025-257.1 regarding the public hearing on the proposed changes to the agency's rules, in the 2025 Montana Administrative Register, Issue No. 16.

On September 11, 2025, a public hearing was held on the proposed changes to the rules via the videoconference and telephonic platform. No comments were received by the comment deadline.

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**Final Rulemaking Action – Effective October 11, 2025**

**ADOPT AS PROPOSED**

The agency has adopted the following rule as proposed:

**NEW RULE 1 (24.159.405) SUBSTANTIAL EQUIVALENCY**

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**Statement of Reasons**

No comments were received.

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**Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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**Rule Reviewer**

Jennifer Stallkamp

**Approval**

Sarah Swanson, Commissioner

**Approval**

Sarah Spangler, RN, Chair, Board of Nursing



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-276.2**

**Summary**

Amendment of ARM 37.34.1902, 37.34.1918, and 37.34.1930 pertaining to Applied Behavior Analysis Services

**Previous Notice(s) and Hearing Information**

On April 25, 2025, the Department of Public Health and Human Services published MAR Notice No. 2025-276.1 pertaining to the public hearing on the proposed amendment of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 8.

A hearing was held on May 15, 2025.

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**Final Rulemaking Action – The department intends for these rule amendments to be retroactively effective to March 1, 2025.**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**37.34.1902 DEFINITIONS**

**37.34.1918 SERVICE REQUIREMENTS**

**37.34.1930 PROVIDER REQUIREMENTS**

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## **Statement of Reasons**

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

COMMENT #1: Multiple commenters applauded the department's work on this set of rules.

RESPONSE #1: The department appreciates the commenters' support.

COMMENT #2: One commenter requests that the functional behavior assessment be a required document for Applied Behavior Analysis (ABA).

RESPONSE #2: The department appreciates the commenter's recommendation. The department is committed to preserving the scientific integrity and tools of behavioral analysis and acknowledges the integrity and professionalism of Board Certified Behavior Analyst professionals (BCBA) who direct the ABA services. However, this change would go beyond the intended scope of this rulemaking. The department will take this recommendation under advisement in future rulemakings.

COMMENT #3: One commenter requests that the ABA manual require authorization reviewers to be a BCBA with experience in ABA and treatment of Autism Spectrum Disorder to be consistent with the CASP Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders, Regulatory Bodies, Service Providers, and Consumers recommendation.

RESPONSE #3: The department clarifies that ABA authorization requests are reviewed by a licensed BCBA and, in the case of the BCBA's absence, reviewers trained by a licensed BCBA. Consequently, the department determines that such a requirement is not necessary at this time.

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## **Contact**

Bailey Yuhas  
(406) 329-7913  
hhsadminrules@mt.gov  
Fax: (406) 444-9744

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**Rule Reviewer**

Olivia Schuler

**Approval**

Charles T. Brereton, Director

Department of Public Health and Human Services



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-278.2**

**Summary**

Amendment of ARM 37.34.1401, 37.34.1402, 37.34.1404, 37.34.1411, 37.34.1412, 37.34.1418, 37.34.1420, and 37.34.1422 and repeal of ARM 37.34.1405 pertaining to Positive Behavior Support Systems

**Previous Notice(s) and Hearing Information**

On April 25, 2025, the Department of Public Health and Human Services published MAR Notice No. 2025-278.1 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 8.

A hearing was held on May 16, 2025.

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**Final Rulemaking Action – Effective October 11, 2025**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**37.34.1401 BEHAVIOR SUPPORT: PURPOSE**

**37.34.1402 BEHAVIOR SUPPORT: APPLICABILITY**

**37.34.1404 BEHAVIOR SUPPORT: DEFINITIONS**

**37.34.1411 BEHAVIOR SUPPORT: BEHAVIOR ASSESSMENT**

**37.34.1412 BEHAVIOR SUPPORT: BEHAVIOR SUPPORT PLAN**

### **37.34.1418 BEHAVIOR SUPPORT: PROHIBITIONS**

### **37.34.1420 BEHAVIOR SUPPORT: EMERGENCY PROCEDURES**

### **37.34.1422 BEHAVIOR SUPPORT: RESTRICTED PROCEDURES**

## **REPEAL**

The agency has repealed the following rule as proposed:

### **37.34.1405 POSITIVE BEHAVIOR SUPPORT: DESCRIPTION**

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#### **Statement of Reasons**

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

COMMENT #1: One commenter emphasized that restraints and seclusion should only be used in emergency situations. The commenter also voiced the importance of supporting natural disability processes, not unduly punishing those with developmental or mental health issues, and enabling self-autonomy in community living.

RESPONSE #1: The department clarifies that seclusion and various forms of restraint are prohibited in ARM 37.34.1418. In line with thoughts of the commenter, physical restraints are allowed in only emergency situations as is outlined in ARM 37.34.1418 and 37.34.1420. The department appreciates the commenter's emphasis of the importance of goals such as enhancing self-autonomy. As those apply to this rulemaking, the rules are intended to meet those interests.

COMMENT #2: One commenter requested clarification regarding alignment with the Applied Behavior Analysis (ABA) program and if it is the department's intention for ABA to be a foundation for Behavior Support Services (BSS).

RESPONSE #2: The department clarifies that the department's intent is not for ABA to be a foundation for BSS. Although ABA and BSS have similarities, these are distinct services with different eligibility requirements. In cases where members are eligible for both services, the expectation is that the state plan service is exhausted before accessing a comparable waiver service.

COMMENT #3: One commenter expressed concern that removing "functional" from functional behavior assessments potentially weakens scientific basis and increases subjectivity. The commenter asserted this could cause an issue with Medicaid ABA services.

RESPONSE #3: The department clarifies that the intent behind this change is not to eliminate the use of functional behavioral assessments, but rather to broaden the types of assessments used to identify behaviors. The department does not foresee issues with Medicaid ABA services caused by this change.

COMMENT #4: One commenter expressed that removal of “functional” behavior assessment causes concern, as it is possible to complete a behavior assessment based on topography or form of the behavior and not be able to effectively treat the underlying function of the behavior.

RESPONSE #4: As is provided in Response #3, the department made this change not to eliminate the use of functional behavioral assessments, but to broaden the types of assessments used to identify behaviors. While the department appreciates the commenter’s concerns, the department does not believe that this change will result in less effective treatment of the underlying causes of behaviors.

COMMENT #5: One commenter requested clarification on why the department removed ARM 37.34.1412(2)(a), (b), (d), and (e).

RESPONSE #5: The department clarifies that our intent is to update the outdated terminology and the list of required information for completing the Behavior Support Plan to be more succinct and clear. In recognition of the professionalism of those developing behavior support plans, the department opted for more succinct language to identify key elements.

COMMENT #6: One commenter stated that there is no Institute for Applied Behavior Analysis (IABA) certification and that such certification is not equivalent to a board-certified behavior analyst (BCBA). The commenter asked for clarification on qualifications required.

RESPONSE #6: The department clarifies that certification means a certificate of completion of the IABA longitudinal assessment and analysis course.

COMMENT #7: One commenter requested that Applied Behavior Analysis be identified in the title and practice requirements. They also expressed concern that qualifications for providers are not included in these rules, such as licensing requirements.

RESPONSE #7: The department appreciates the commenter for their suggestion and respectfully disagrees. Although there are similarities between the Applied Behavior Analysis program and Behavior Supports, Behavior Supports allows for a broader scope of professionals than the Applied Behavior Analysis services. Licensing requirements are also beyond the scope of this rulemaking.

COMMENT #8: One commenter asked that BCBAs be included in ARM 37.34.1404(25) as a licensed provider.

RESPONSE #8: The department clarifies that ARM 37.34.1404(25) does not provide an exhaustive list of people considered licensed professionals. It only provides a list of non-exclusive broad examples of licensed professionals. The department does not see a need to specifically add BCBAs at this time.

COMMENT #9: One commenter expressed concern about the removal of environmental support requirements and teaching of replacement behaviors to behavior support plans. The commenter is concerned this could remove proactive components, instead relying on reactive intervention.

RESPONSE #9: The department understands this comment to relate to the changes in ARM 37.34.1412(2). The department removed sections of ARM 37.34.1412(2) for the reasons provided in Response #4. The department does not anticipate that this change for clarity and succinctness will result in behavior support plans now focusing only on reactive intervention. For example, the newly renumbered ARM 37.34.1412(2)(b), (c), and (e) still require proactive considerations. Additionally, ARM 37.34.1411 still requires behavior assessments to consider environmental factors.

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### **Rule Reviewer**

Olivia Schuler

### **Approval**

Charles T. Brereton, Director  
Department of Public Health and Human Services



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-98.2**

**Summary**

Amendment of ARM 37.86.2901 and 37.86.2907 pertaining to inpatient rehabilitation facilities

**Previous Notice(s) and Hearing Information**

On April 25, 2025, the Department of Public Health and Human Services published MAR Notice No. 2025-98.1 pertaining to the public hearing on the proposed amendment of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 8.

A hearing was held on May 15, 2025.

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**Final Rulemaking Action – The department intends to apply these rule amendments retroactively to October 1, 2023.**

**AMEND AS PROPOSED**

The agency has amended the following rule as proposed:

**37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION**

**AMEND WITH CHANGES**

The agency has amended the following rule with the following changes from the original proposal, stricken matter interlined, new matter underlined:

**37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS**

- (1) "Acute care psychiatric hospital" means a psychiatric facility accredited by the Joint Commission on Accreditation of Health Care Organizations that is devoted to the provision of inpatient psychiatric care for persons under the age of 21 and licensed as a hospital by:
  - (a) the department; or
  - (b) an equivalent agency in the state in which the facility is located.
- (2) "Administratively necessary days" or "inappropriate level of care services" means those services for which alternative placement of a client is planned and/or effected and for which there is no medical necessity for acute level inpatient hospital care.
- (3) "All patient refined diagnosis related groups (APR-DRGs)" means DRGs that classify each inpatient case based on claim information such as diagnosis, procedures performed, client age, client sex, and discharge status.
- (4) "Bad debt" means inpatient and outpatient hospital services provided in which full payment is not received from the client or from a third party payor, for which the provider expected payment and the persons are unable or unwilling to pay their bill. Bad debts may be for services provided to clients who have no health insurance or clients who are underinsured and are net of payments (the amount that remains after payment) made toward these services. For the purpose of uncompensated care, bad debt is measured on the basis of revenue forgone, at full established rates, and bad debt does not include either provider discounts or Medicare bad debt.
- (5) "Base price" means a dollar amount, including capital expenses, that is reviewed by the department each year to allow for appropriation neutrality.
- (6) "Border hospital" means a hospital located outside Montana, but no more than 100 miles from the border.
- (7) "Capital related cost" means a cost incurred in the purchase of land, buildings, construction, and equipment as provided in 42 CFR 413.130.
- (8) "Center of Excellence" means a hospital specifically designated by the department as being able to provide a higher level multi-specialty of comprehensive care and meets the criteria in ARM 37.86.2947(3).
- (9) "Charity care" means free or discounted inpatient and outpatient hospital services provided to persons who meet the hospital's eligibility criteria for financial assistance and are unable to pay for all or a portion of the services. Charity care eligibility is determined pursuant to a hospital's policies. For the purpose of uncompensated care, charity care is measured on the basis of revenue forgone, at full established rates. Charity care does not include contractual write-offs.
- (10) "Clinical trials" means trials that are directly funded or supported by centers or cooperating groups funded by the National Institutes of Health (NIH), the Centers



for Disease Control and Prevention (CDC), the Agency for Healthcare Research and Quality (AHRQ), the Centers for Medicare & Medicaid Services (CMS), the Department of Defense (DOD), or the Department of Veterans Affairs (VA).

- (11) "Cost-based hospital" means a licensed acute care hospital that is reimbursed on the basis of allowable costs.
- (12) "Cost outlier" means an additional payment for unusually high cost cases that exceeds the cost outlier thresholds as set forth in ARM 37.86.2916.
- (13) "Critical access hospital" means a limited-service rural hospital licensed by the Montana Department of Public Health and Human Services.
- (14) "Direct nursing care" means the care given directly to the client that requires the skills and expertise of a registered nurse (RN) or licensed practical nurse (LPN).
- (15) "Discharging hospital" means a hospital, other than a transferring hospital as described in (45), that formally discharges an inpatient. Release of a client to another hospital, as described in (39), or a leave of absence from the hospital, is not recognized as a discharge. A client who dies in the hospital is considered a discharge.
- (16) "Disproportionate share hospital" means a hospital serving a disproportionate share of low income clients as defined in section 1923 of the Social Security Act.
- (17) "Disproportionate share hospital specific uncompensated care" means the costs of inpatient and outpatient hospital services provided to clients who have no health insurance or source of third party coverage.
- (18) "Distinct part psychiatric unit" means a psychiatric unit of an acute care general hospital that meets the requirements of 42 C.F.R. § 412.27.
- (19) "Distinct part rehabilitation unit" means a rehabilitation unit of an acute care general hospital that meets the requirements in 42 C.F.R. §§ 412.25 and 412.29.
- (20) "Early elective delivery" means either a nonmedically necessary labor induction or cesarean section that is performed prior to 39 weeks and 0/7 days gestation.
- (21) "Experimental/investigational service" means a noncovered item or procedure considered experimental and/or investigational by the U.S. Department of Health and Human Services or any other appropriate federal agency.
- (22) "Graduate medical education (GME)" means a postgraduate primary care residency program approved by the Accreditation Council for Graduate Medical Education (ACGME) offered by an eligible in-state hospital for the purpose of providing formal hospital-based training and education under the supervision of a licensed medical physician.
- (23) "Hospital Acquired Condition (HAC)" means a condition that occurs during an inpatient hospital stay and results in a high cost or high volume of care or both;

results in a claim being assigned to a diagnosis related group (DRG) that has a higher payment when present as a secondary diagnosis; and could have reasonably been prevented through the application of evidence-based guidelines as defined in section 5001(c) of the Deficit Reduction Act of 2005.

- (24) "Hospital reimbursement adjustor (HRA)" means a payment to a Montana hospital as specified in ARM 37.86.2928 and 37.86.2940.
- (25) "Hospital resident" means a person who is unable to be cared for in a setting other than the acute care hospital as provided in ARM 37.86.2921.
- (26) "Inpatient" means a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. A person generally is considered an inpatient if formally admitted as an inpatient with an expectation that the person will remain in the hospital for more than 24 hours. The physician or other practitioner is responsible for deciding whether the person should be admitted as an inpatient. Inpatient hospital admissions are subject to retrospective review by the department or the department's designated review organization to determine whether the inpatient admission was medically necessary for Medicaid payment purposes.
- (27) "Inpatient hospital services" means services that are ordinarily furnished in an acute care hospital for the care and treatment of an inpatient under the direction of a physician, dentist, or other practitioner as permitted by federal law, and that are furnished in an institution that:
  - (a) is licensed or formally approved as an acute care hospital by the officially designated authority in the state where the institution is located;
  - (b) except as otherwise permitted by federal law, meets the requirements for participation in Medicare as a hospital and has in effect a utilization review plan that meets the requirements of 42 C.F.R. § 482.30; or
  - (c) provides acute care psychiatric hospital services as defined in this rule for individuals under age 21.
- (28) "Inpatient hospital utilization fee" means the utilization fee collected by the Department of Revenue as provided in Mont. Code Ann. § 15-66-102.
- (29) "Inpatient Rehabilitation Facility's (IRF's)" means free standing Rehabilitation Hospitals or Rehabilitation Units located in a hospital that meets the requirements in 42 CFR 412.29.
- (30) "Interim claim" in a prospective payment system (PPS) hospital means a claim being billed for an inpatient hospital stay equal to or exceeding 30 days at the same facility as referenced in ARM 37.86.2905.
- (31) "Long-acting reversible contraceptives (LARCs)" means intrauterine devices and contraceptive implants that provide long-acting reversible contraception.

- (32) "Long term acute care hospital (LTAC)" means an acute care hospital as defined in 42 C.F.R. § 412.23.
- (33) "Low income utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2935.
- (34) "Medicaid inpatient utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2932.
- (35) "Out-of-state hospital" means a hospital located more than 100 miles beyond the Montana state border.
- (36) "Partial eligibility" means a client that is only eligible for Medicaid benefits during a portion of the inpatient hospital stay as specified in ARM 37.86.2918.
- (37) "Present on admission (POA)" means conditions that are present at the time a medical order for an inpatient admission occurs.
- (38) "Prior authorization (PA)" means the approval process required before certain services are paid by Medicaid. Prior authorization must be obtained before providing the service.
- (39) "Prospective payment system (PPS) hospital" means a hospital reimbursed pursuant to the diagnosis related group (DRG) system. DRG hospitals are classified as such by CMS in accordance with 42 C.F.R. § 412.
- (40) "Relative weight" means a weight assigned from a national database from 3M that reflects the typical resources consumed per APR-DRG.
- (41) "Routine disproportionate share hospital" means a hospital in Montana which meets the criteria of ARM 37.86.2931.
- (42) "Rural hospital" means for purposes of determining disproportionate share hospital payments, an acute care hospital that is located within a "rural area" as defined in 42 C.F.R. § 412.62.
- (43) "Sole community hospital" means a DRG reimbursed hospital classified as such by CMS in accordance with 42 C.F.R. § 412.92.
- (44) "Third party liability (TPL)" means any entity that is, or may be, liable to pay all or part of the medical cost of care for a Medicaid eligible client.
- (45) "Transferring hospital" means a hospital that formally releases an inpatient client to another inpatient hospital or inpatient unit of a hospital.
- (46) "Transplant" means to transfer either tissue or an organ from one body or body part to another as referenced in ARM 37.86.4701. A transplant may be either:
  - (a) "organ transplantation", the implantation of a living, viable, and functioning human organ for the purpose of maintaining all or a major part of that organ function in the client; or

- (b) "tissue transplantation", the implantation of living, human tissue.
- (47) "Uncompensated care" means hospital services provided in which no payment is received from the client or from a third party payor. Uncompensated care includes charity care and bad debts.
- (48) "Upper payment limit" means a federal limit placed on fee-for-service reimbursement of Medicaid providers.
- (49) "Urban hospital" means an acute care hospital that is located within a metropolitan statistical area, as defined in 42 C.F.R. § 412.62.

**Authorizing statute(s):** 53-2-201, 53-6-113, MCA

**Implementing statute(s):** 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

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### **Statement of Reasons**

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

COMMENT #1: One commenter stated that the department should reference a formal classification, such as 42 CFR 412.29, in its definition of "inpatient rehabilitation facility (IRF)" to distinguish IRFs from other facilities because Montana does not separately license IRFs.

RESPONSE #1: The department agrees with the comment. The amended ARM 37.86.2901 has been revised to reference 42 CFR 412.29 in the definition of "inpatient rehabilitation facility (IRF)."

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**Rule Reviewer**

Chanan Brown

**Approval**

Charles T. Brereton, Director

Department of Public Health and Human Services



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF TRANSPORTATION**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-90.2**

**Summary**

The Department of Transportation has amended its rules to comply with the Fly the Big Sky legislative audit findings dated September 2022, and provided clarifying language for the benefit of grant and loan applicants.

**Previous Notice(s) and Hearing Information**

On August 22, 2025, the department published MAR Notice No. 2025-90.1 regarding the proposed amendments to the agency's rules in the 2025 Montana Administrative Register, Issue No. 16. No hearing was held. The comment period ended September 19, 2025, and no comments were received.

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**Final Rulemaking Action – Effective October 11, 2025**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**18.13.405 APPLICATION PROCESS, FEES, AND DEADLINES**

**18.13.406 EVALUATION, REVIEW, AND SELECTION**

**18.13.407 TERMS AND CONDITIONS OF SUCCESSFUL APPLICANTS**

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**Statement of Reasons**

No comments were received.

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**Rule Reviewer**

Tyler Moss

**Approval**

Christopher Dorrington, Director



MONTANA  
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**PETROLEUM TANK RELEASE COMPENSATION BOARD**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-195.2**

**Summary**

Amendment of rules pertaining to Senate Bill 315 (2025) and Red Tape Relief Initiative

**Previous Notice(s) and Hearing Information**

On July 25, 2025, the Petroleum Tank Release Compensation Board (board) published MAR Notice No. 2025-195.1 regarding the public hearing on the proposed amendment to the board's rules in the 2025 Montana Administrative Register, Issue No. 14. A public hearing was held on August 18, 2025.

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**Final Rulemaking Action – Effective January 1, 2026**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**17.58.201 MODEL RULES**

**17.58.311 DEFINITIONS**

**17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT**

**17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED**

**17.58.343 REVIEW AND DETERMINATION OF THIRD-PARTY DAMAGE COSTS**

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**Statement of Reasons**

No comments were received.

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**Rule Reviewer**

Garnet Pirre

**Approval**

John Monahan, Presiding Officer